

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 and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

**ORIGINAL DATE** 1/26/16

**SPONSOR** Roybal Caballero      **LAST UPDATED** \_\_\_\_\_      **HB** 84

**SHORT TITLE** Small Loan Interest Rate Caps      **SB** \_\_\_\_\_

**ANALYST** Liu

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
(\$70.0 - \$210.0)	(\$70.0 - \$210.0)	(\$70.0 - \$210.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Companion to HJR11

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Regulation and Licensing Department (RLD)

Attorney General's Office (AGO)

### SUMMARY

House Bill 84 amends the Money, Interest, and Usury statute (Section 56-8-9 NMSA 1978), New Mexico Bank Installment Loan Act of 1959, and New Mexico Small Loan Act to establish an interest rate cap of 36 percent per year for extensions of credit. Calculation of interest includes any periodic or nonperiodic interest or finance charge, any ancillary products or services, and any other charges or fees incident to the extension of credit. This limitation on interest would not apply to any federally insured depository institution or government-issued bonds. The bill voids any contract for the extension of credit in excess of the maximum rate of thirty-six percent entered into after July 1, 2016, as to principal and interest.

In the event the United States prime lending rate exceeds 10 percent, the bill allows the interest rate to exceed 36 percent per year but not 30 percentage points in excess of the United States prime lending rate. The bill also repeals Section 58-15-33 NMSA 1978 which outlines permitted charges for payday loan products.

## **FISCAL IMPLICATIONS**

According to RLD, this bill would reduce the number of small loan licensees. There would be a reduction in license revenue of \$700 for every small loan licensee that does not renew their license. For every one hundred licensees that do not renew, the division would see a revenue reduction of \$70 thousand.

## **SIGNIFICANT ISSUES**

RLD offers the following commentary:

Page 7, lines 19 through 20, repeals Section 58-15-33 NMSA 1978, which effectively eliminates all administrative fees on payday loan products. However the bill leaves intact the remaining provisions of the Small Loan Act which are specific to payday loan products (Section 58-15-32 NMSA 1978, and Section 58-15-34 through 58-15-38 NMSA 1978).

The bill does not address the procedure for discontinuance of the payday loan database system. Payday lenders currently fund the database through a fifty cent administrative fee assessed on new payday loan transactions, specified in Section 58-15-33 NMSA 1978. If the fees are eliminated by the repeal of Section 58-15-33 NMSA 1978 the database will no longer be funded; however, loans with an outstanding balance will require the database to remain operable. Without any funding for the database, tracking outstanding loans will no longer be available. It will be necessary for the database to remain operational for six months from the effective date of this bill as the borrowers will have the ability to enter a payday loan payment option for a minimum of one hundred thirty days pursuant to Section 58-15-35 NMSA 1978. The database provider has not provided a cost for maintaining the database for the six month period.

Page 2, Line 8 through 11, contradicts the Home Loan Protection Act (HLP) §58-21A-3 (M) (1) (d) (1-14) NMSA 1978 regarding the inclusion of charges or fees to the extension of credit. The HLP carves out specific categories of fees if the amounts are bona fide and reasonable and paid to a person other than the creditor or an affiliate of the creditor.

AGO offers the following commentary:

There is currently no interest rate cap in the New Mexico Small Loan Act. New Mexico is in the minority of states that do not have a small loan interest rate cap. The 36 percent cap incentivizes lenders to make longer-term loans that earn enough interest to cover their origination costs. The cap does not incentivize loan flipping and new fees. The 36 percent interest rate cap forces lenders to minimize write-offs and avoid bad loans.

## **COMPANIONSHIP**

This bill provides enabling legislation for HJR 11, which proposes to amend Article 20 of the constitution to limit interest rates charged or received by certain persons for the extension of credit to 36 percent or less per year. The limitation on interest rates for the extension of credit in HJR 11 would not apply to any federally insured depository institution or any government-issued bond. If approved by the Legislature, the amendment would be passed through referendum.

## **TECHNICAL ISSUES**

RLD offers the following commentary:

Page 2, line 10, page 6, line 7, and page 7, line 5, should provide a definition of “ancillary products or services” to avoid confusion over what types of products are included in the annual rate calculation.

Page 2, lines 19 through 23, page 6, lines 16 through 20, and page 7, lines 14 through 18, establish a legal interest rate cap of thirty percentage points above the United States prime lending rate in the event the prime lending rate exceeds ten percent. Clarification as to the acceptable time periods for this calculation is necessary (i.e. daily, weekly, monthly, quarterly, or annually).

## **OTHER SUBSTANTIVE ISSUES**

The Military Lending Act was signed into law in 2007, placing an all-inclusive 36 annual percentage rate (APR) cap on loans made to all active military personnel and their families. According to the Corporation for Enterprise Development (CFED), 17 states and the District of Columbia (D.C.) prohibit or cap APRs for payday loans at 36 percent or lower. Twenty-nine states and D.C. cap or prohibit vehicle title loans, and 20 states and D.C. cap small dollar installment loans. Four states do not prohibit or cap APRs for small consumer loans. New Mexico caps APRs for payday loans at about 400 percent by limiting administrative fees on loans with maturities between 14 days and 35 days to \$15.50 for every \$100 of principal borrowed. The law does not place restrictions on loans that fall outside of its definitive scope, which includes loans with principals greater than \$2,500 or terms exceeding 35 days.

A 2010 University of New Mexico study of 199 New Mexicans found that over 82 percent thought credit card interest rates should be capped at 25 percent or less, and over 72 percent felt that storefront or short-term loans should be capped at 25 percent or less. In 2014 Public Policy Polling surveyed 601 New Mexico voters and found 80 percent of participants would support a change in state law lowering the maximum annual interest rates lenders could charge from 300 percent to 36 percent, even if the resulting cap would force some lenders to lay off employees or close stores. According to The Pew Charitable Trusts, states with high or no rate caps have the most payday loan stores per capita, and states with lower rates have fewer stores but similar loan volumes. There are no payday loan stores in the 15 states that prohibit payday lending or interest rates higher than 36 percent.

A 2013 national survey by the Federal Deposit Insurance Corporation found that nearly 30 percent of New Mexico households reported using one or more alternative financial services (AFS) such as non-bank money orders, non-bank check cashing, non-bank remittances, payday loans, pawn shop loans, rent-to-own loans, and refund anticipation loans. Households that reported using one or more AFS tended to be Hispanic, 25 to 34 years of age, employed, disabled, and unbanked. Most AFS users were not homeowners, lacked a high school degree, and reported family income less than \$15 thousand. According to the CFED 2014 Assets and Opportunity Scorecard, about 44.4 percent of households in New Mexico were “liquid asset poor,” meaning they had less than three months’ worth of savings (measured as \$5,887 for a family of four or three times monthly income at the poverty level). About 56 percent of U.S.

consumers have subprime credit scores, and many use AFS products to complement or meet financial needs.

In 2015, the Consumer Financial Protection Bureau released a proposal to limit certain practices for payday, vehicle title, and similar loans. The proposal set ability to repay and alternative lending requirements for “covered loans” which the federal bureau defined as “short-term credit products with contractual durations of 45 days or less and longer-term credit products with an all-in APR in excess of 36 percent where the lender obtains a preferred payment position by either obtaining access to repayment through a consumer’s account or paycheck or a non-purchase money security interest in the consumer’s vehicle.”

A 2005 Federal Deposit Insurance Corporation (FDIC) working paper found fixed operating costs and high loan loss rates justified a large part of the high APR charged on payday advance loans. In 2010, the FDIC concluded a two-year pilot program to study the feasibility of banks offering affordable small-dollar loan products. Participating banks provided loan amounts up to \$2,500, annual percentage rates of 36 percent or less, low or no fees, streamlined underwriting, and loan terms of 90 days or more. The pilot found that the interest and fees generated were not always sufficient to achieve robust short-term profitability. Rather, most pilot bankers sought to generate long-term profitability through volume and by using small-dollar loans to cross-sell additional products.

Credit unions, community development financial institutions (CDFI), community loan centers, and some lenders have been able to provide small loan products within an APR cap of 36 percent. Credit unions like Government Employees Credit Union are able to offer small loans at an APR of 27.9 percent. Native Community Finance, a CDFI, is able to provide financial counseling and refinance loans at APRs less than 15 percent for subprime borrowers. Applicants that demonstrate an ability to repay the loan are generally offered fixed-term loans from \$400 to \$5,000 with maturities greater than six months. Since 2007, Native Community Finance has written off a total of \$1,127 on these loan products.

([http://www.nmlegis.gov:8080/Entity/LFC/Documents/General\\_Government/Consumer%20Lending%20Practices%20in%20New%20Mexico.pdf](http://www.nmlegis.gov:8080/Entity/LFC/Documents/General_Government/Consumer%20Lending%20Practices%20in%20New%20Mexico.pdf))

SL/jo