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## FISCAL IMPACT REPORT

SPONSOR HBIC ORIGINAL DATE 03/06/17  
LAST UPDATED 03/16/17 HB 438/HBICS  
SHORT TITLE Disclosure of Tax Refund Loan Fees SB \_\_\_\_\_  
ANALYST Amacher

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to/Conflicts with: SB 15, SB 398; and HB 26, HB 100, HB 347/HBICS, HB 368, HB 480

Duplicates: SB 414/SCORCS

### SOURCES OF INFORMATION

LFC Files

Office of the Attorney General (OAG)

Regulation & Licensing Department (RLD)

### SUMMARY

#### Synopsis of HBIC Amendment

The House Business and Industry Committee Substitute of House Bill 438 amends the New Mexico Small Loan Act by allowing licensees to charge the pre-computed interest, fees and charges on refund anticipation loans. Such loans may be payable upon demand or for any term not to exceed one year. This act requires disclosures of fees and interest associated with tax refund anticipation loans; and establishes requirements, permitted charges and prohibited acts for tax refund anticipation loans. This bill has an effective date of July 1, 2017.

### FISCAL IMPLICATIONS

No known fiscal impacts.

### SIGNIFICANT ISSUES

The House Business and Industry Committee Substitute of House Bill 438 amends the New Mexico Small Loan Act; requires disclosures of fees and interest associated with tax refund

anticipation loans (RAL); and establishes requirements, permitted charges and prohibited acts for tax refund anticipation loans.

Section 1 defines “creditor” to mean any person who makes a refund anticipation loan or takes an assignment of such loan. As outlined in this bill, a “refund anticipation loan” (RAL) means a loan that is secured by the repayment sourced from the proceeds of the consumer’s federal or state personal income tax refunds or tax credits.

Section 2 amends the New Mexico Small Loan Act by allowing licensees to charge the pre-computed interest, fees and charges on refund anticipation loans. The simple interest method of computation is required for charging interest on loans other than an RAL.

Section 3 presents new material outlining the required disclosures for RALs. As proposed under the Small Loan Act, small loan licensees are required to issue written disclosures that outline the fee schedule. A written statement that the loan is not the actual tax refund is also required. This section makes clear the consumer may file a personal income tax refund electronically without applying for a RAL. The director of the Financial Industries Division determines the form and language of such disclosures.

Section 4 proposes new material for the refund anticipation loan requirements. Specifically, this bill requires that an RAL may not exceed 70% of the anticipated combined state and federal returns; may be payable upon demand or for any term not to exceed one year; and, ensures the consumer has right of rescission by returning the advance within one business day. Notably, the provisions require disclosure of credit terms to be in compliance with federal regulations 12 C.F.R. 1026 (“Regulation Z”). This bill requires collection must comply with the federal Fair Debt Collection Practices Act.

Section 5 presents new material regarding RAL permitted charges. This bill allows a licensee to charge a one-time fee of \$35, and a document fee of \$10, and interest of \$18 per \$100 of principal. This act determines the interest, tax refund estimate charge and document fees as nonrefundable at the time the RAL agreement is executed, unless a consumer timely rescinds the RAL.

Section 6 outlines the new provisions of prohibited acts regarding an RAL. It is made clear that a licensee shall not represent an a RAL as a refund or tax credit; charge fees in excess of those permitted; requires a customer to enter into a loan contract to complete a tax return; misrepresent a material fact or condition or the disclosures; withhold certain original personal identification documents from the consumer.

Section 7 addresses preemption of refund anticipation loans. As proposed, the state has exclusive jurisdiction and authority regarding the terms and conditions of an RAL. This bill effectively preempts counties, municipalities, and other political subdivisions of the state from any regulation of the terms and conditions of a permitted RAL.

Section 8 is the severability clause in the event any part or application of the provisions of this act are held invalid, the remainder or its application to other situations or persons shall not be affected.

This bill has an effective date of July 1, 2017.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 438/HBICS duplicates SB 414/SCORCS.

The following bills relate to HB 438/HBICS through the amendments to the New Mexico Small Loan Act and the New Mexico Bank Installment Loan Act.:

“Small Loan Interest Rate Caps”, SB 15 and HB 26 duplicate HB 480; effectively cap the Annual Percentage Rate to 36% applicable to all loans.

HB 100, “Short Term-Loan Positive Credit Reporting”, requires reporting solely for positive loan performance.

HB 347/HBICS, “Installment Loan Fee Limits & Literacy Funds”, limits fees and charges for certain installment loans; requires reporting to credit agencies; and eliminates payday loans. HB 347/HBICS provisions are not applicable to federally insured depository institutions which include credit unions and savings & loan companies; and it creates the Financial Literacy Fund. HB 347/HBICS conflicts with HB 100 in that CS/HB 347/HBIC requires mandatory credit reporting for all loan performance.

“Small Loan Act Requirements”, HB 368 and SB 398 shift the reporting on transactions to a more comprehensive annual reporting by loan product. These bills require the licensees to produce an annual report to FID no later than March 31<sup>st</sup>. Failure to report to FID on time will result in suspension of license and a fine of \$1,500 per day until the report is filed.

“Small Loan Interest Rates”, HB 480 establishes an interest rate cap of 36% per year, with an exception allowing a higher cap in the event that the U.S. prime lending rate exceeds ten percent, and requires that the calculation of interest to include interest, finance charges, other products or services, and charges or fees that are included in the terms of the loan. The bill provides that any contract for such loans entered into after July 1, 2017, that has an interest rate over 36 percent is void as a matter of law.

The 36% interest rate cap as proposed in HB 480, HB 26, and SB 15 which is applicable to all loans, directly conflicts with HB 347/HBICS, HB 438/HBICS and SB 414/SCORCS.

## OTHER SUBSTANTIVE ISSUES

The Office of the Attorney General (OAG) comments that interest rates in New Mexico are not regulated by statute, with the limited exception of the effective 400% rate for “payday loans” in the Small Loan Act, and a cap of 15% for loans in which the interest rate is not specified, (Chapter 56-8-3 NMSA 1978). The OAG indicates that in 2014 the New Mexico Supreme Court issued a decision, *State of New Mexico et al v. B & B Investment Group Inc. et al*, 2014-NMSC-024, 329 P.3d 658, holding that certain interest rates were unconscionable and ordering restitution of all interest in excess of 15% of the loan principal for the loans identified in the suit. The effective Annual Percentage Rate permitted by this bill appears to exceed this threshold, since it allows what appears to be a flat fee (called ‘pre-computed interest’ of \$18.00 per \$100.00 of principal borrowed plus a onetime tax refund estimate of \$35 and \$10 in document fees per loan.)

The OAG highlights that the United States Congress passed the Military Lending Act imposes a 36% cap on consumer loans made to active-duty service members and covered dependents. This bill would allow effective annual percentage rates (of interest) in excess of those permitted by the Military Lending Act.

The OAG also comments that beginning with the 2013 tax season, major U.S. banks stopped offering RALs and instead instituted similar financial products called RACs, which are not loans but are rather temporary accounts which sit empty waiting for the client's IRS refund. Furthermore, that in Section 6 (G) which prohibits the withholding of personal identification documents from a consumer or their dependent there is no mention of other relations, such as guardian or spouse.

Additional clarification is requested by RLD regarding the terms “department” and the authority of “the state”. The term “department” is defined as being the FID for the purposes of the SLA. However, in the context of the subsection C of the disclosure form to be provided to RAL borrowers (see page 7, lines 1 through 5), RLD indicates it may be more appropriate to make reference to the New Mexico Taxation and Revenue Department.

RLD suggests amending the language of Section 7 to specify the authority of the director of FID as opposed to “the state” to provide clarity. As proposed, the new section added to the SLA provides “the state” exclusive jurisdiction regarding terms and conditions of refund anticipation loans (page 12, lines 2 through 8). However, in multiple provisions of the SLA, the authority for licensing, examination and regulation of entities is by the authority of the director of the FID.

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.

JMA/sb/jle