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## FISCAL IMPACT REPORT

SPONSOR Herrera/Roybal ORIGINAL DATE 02/02/21  
Caballero/Garratt LAST UPDATED 02/02/21 HB 149

SHORT TITLE Installment Loan Changes SB \_\_\_\_\_

ANALYST Hanika-Ortiz

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
	(Indeterminate)	(Indeterminate)	Recurring	OSF
	(Indeterminate)	(Indeterminate)	Recurring	Financial Literacy Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Regulation and Licensing Department (RLD)

#### No Responses Received From

Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of Bill

House Bill 149 (HB149) amends the Bank Installment Loan Act (BILA) and the Small Loan Act (SLA) by reducing the maximum annual percentage rate (APR) allowable for loans from 175 percent to 36 percent, or higher if the prime rate is above 10 percent for two months. The bill also increases the covered loan amount from \$5 thousand to \$10 thousand. Finally, the bill changes the calculation of the APR and expands the definition of persons subject to the BILA and SLA.

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

### FISCAL IMPLICATIONS

RLD reports the bill may result in reduced fee revenue if the number of loan companies licensed

or the number of loans made decline. RLD's Financial Institutions Division (FID) currently licenses lenders making loans within the provisions set forth in the SLA. License renewal fees are a minimum \$500 plus 75 cents per \$1,000 of loans outstanding as of December 31 of the preceding year. Licensees are also assessed a \$200 exam fee and a \$200 fee to finance financial literacy programs in New Mexico. The fiscal impact will depend on number of licensees and value of loans.

There may also be an impact on court resources from its participation in determining whether a person is a "lender" and a transaction is structured to evade the requirements of the SLA.

## **SIGNIFICANT ISSUES**

RLD notes the bill expands people subject to licensing to include a person who, by a "totality of circumstances," is a lender and the transaction is structured to evade the requirements of the SLA. Further, it indicates this decision would be made by the courts. This wording may create confusion concerning who may initiate an investigation or legal action, as well as confusion as to the proper notice, hearing, and appeal process to be followed in the event action against a person for an alleged violation of the SLA licensure requirement is undertaken.

The SLA specifies the duties of the director of FID in the event the director seeks to deny, revoke, suspend, or impose other administrative action on a licensee. The SLA requires the issuance of an order by the director on such matters (in most cases following a required written notice and opportunity for hearing) and provides a statutory right to appeal of such order to the district court for judicial review. However, the SLA also provides for a misdemeanor criminal charge to be brought for a violation of the SLA and provides that certain types of violations of the SLA that also constitute violations of the Unfair Practices Act (UPA) may be pursued under the UPA. As drafted, the bill language does not clarify the entity authorized to initiate review or pursue action under this section, or what legal process will lead to the matter being brought before the court.

According to RLD, one alternative to the possible confusion stated above may be to specify that the director of FID will determine whether the totality of the circumstances indicate the person is a lender and a transaction is structured to evade requirements of the SLA, and the director will issue a final order on the matter, subject to review through the standard judicial review process.

## **PERFORMANCE IMPLICATIONS**

The proposed APR calculation changes for both BILA and SLA would create a conflict of law between other sections of BILA and SLA, as well as federal law, 12 CFR Part 1026 – Truth in Lending (Regulation Z), concerning the definition of APR. According to RLD, an alternative to avoid this conflict would be to require both the current Regulation Z APR disclosure and a second calculation (utilizing the criteria in Section 3 of the bill, beginning at pg. 6, line 6, and continuing through pg. 7, line 2) that would be titled as something other than APR, to demonstrate the total annual percentage cost of financing, including products or fees not covered under Regulation Z.

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

Duplicates Senate Bill 66, Permitted Percentage Rates For Loans (although titled differently).

**TECHNICAL ISSUES**

RLD commented the calculation of APR is based on an annual payback period. Therefore, a loan under the current SLA or BILA with a repayment period of four months and the current maximum APR of 175 percent would equate to an interest rate of 57.5 percent, assuming no other fees are charged. Under the bill, however, a loan with a repayment period of four months and maximum APR of 36 percent would be limited to an interest rate of 11.8 percent, assuming that no other fees charged.

AHO/sb/rl