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## FISCAL IMPACT REPORT

SPONSOR Roybal Caballero ORIGINAL DATE 1/31/21  
LAST UPDATED \_\_\_\_\_ HB 78  
SHORT TITLE Cap on Certain Interest Rates SB \_\_\_\_\_  
ANALYST J. Torres

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

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB 107

Relates to HB 132 and SB 129

### **SOURCES OF INFORMATION**

LFC Files, Sections 56-8-9, 56-8-13, 58-7-7, 58-15-10.1 and 58-15-17, NMSA1978

#### Responses Received From

Regulation and Licensing Department (RLD)

New Mexico Attorney General (NMAG)

### **SUMMARY**

#### Synopsis of Bill

HB78 caps interest rates at 36 percent per year for loans or credit extended by persons or entities governed by the New Mexico Bank Installment Loan Act [BILA]; and Small Loan Act [SLA]. The current Annual Percentage Rate (APR) cap is 175 percent. HB78 amends Sections 56-8-9, 58-7-7 and 58-15-17 NMSA 1978 to include the 36 percent APR cap. The amended Section 56-8-13 states that contracts in excess of said interest rate shall be void as to principal and interest. Section 58-15-10.1 NMSA 1978 amendments modify licensee reporting caps.

Federally insured depository institutions and government-issued bonds are excluded from the 36 percent cap. If the United States (U.S.) prime lending rate exceeds 10 percent, the 36 percent interest cap may be exceeded by no more than 30 percentage points over the U.S. prime lending rate. A lender may also charge a premium or points of up to 3 percent on interim construction and real estate loans, provided they do not exceed the specified APR caps. Small loan licensees must file annual reports of loans made at interest rates of: less than or equal to 10 percent; more than 10 to 18 percent; more than 18 to 36 percent; and more than 36 percent.

The Financial Industries Division of the Regulation and Licensing Department (RLD/FID), summarizes HB78 as follows: “HB78 amends Chapter 56 Commercial Instruments and Transactions, Chapter 58 - Section 7 the Bank Installment Loan Act of 1959 (BILA), and Chapter 58 - Section 15 the Small Loan Act of 1955 (SLA). HB 78 amendments place interest rate restrictions, and void non-compliant loans made after the Act’s effective date of July 1, 2022. Specifically, the amendments would limit the maximum “interest rate” to 36 percent, as described in newly added Section 56-8-9(C) [See Bill Section 1; p. 2], to loans of any amount in New Mexico that are made by non-federally insured depository institutions. HB78 also proposes to limit the annual percentage rate (APR) to 36 percent (as determined by 12 CFR 1026, aka “Regulation Z”) on loans made pursuant to the BILA and SLA.

Under the terms of HB78, the “interest rate” limitation is raised when the United States prime interest rate exceeds 10 percent. However, HB78 still limits loans to a maximum rate of 30 percentage points over the prime interest lending rate on all loans originated by non-federally insured institutions. When the prime rate does not exceed 10 percent, HB78 limits the “annual percentage rate” for all loans to a maximum of 36 percent.”

The effective date of this bill is July 1, 2022.

### **FISCAL IMPLICATIONS**

RLD/FID notes: “FID currently licenses lenders making loans within the provisions set forth in the BILA and SLA. Under existing laws, new licensees are assessed fees totaling \$1,900. This total is comprised of a \$1,000 investigation fee, a license fee of \$500, a \$200 examination fee, as well as a \$200 financial literacy fee. License renewal fees are a minimum of \$900. This is comprised of the fixed licensing fee of \$500 plus a variable component of 75 cents per \$1,000 of loans made under the SLA that are outstanding as of December 31 of the preceding year. Renewal licensees are also assessed a \$200 exam fee and \$200 financial literacy fee. The fiscal impact of these amendments would be limited to licensing revenues collected by the State under the Small Loan Act (SLA), which would depend on any change in the number of licensees and the value of loans made by licensees.”

NMAG indicated there are no fiscal implications to that office.

### **SIGNIFICANT ISSUES**

The proposed amendments place a 36 percent interest cap on specified loans. This is the current cap for military loans and is far below the current statewide loan cap of 175 percent. Loan operators may argue that the reduced caps will hurt their business. Consumers will likely favor HB78.

### **PERFORMANCE IMPLICATIONS**

Capping the APR at 36 percent may hurt small loan companies falling within the regulated definitions of HB78.

### **ADMINISTRATIVE IMPLICATIONS**

HB78 may increase RLD/FID’s administrative responsibilities as to licensees however this

agency reports no administrative implications.  
NMAG reports no administrative implications.

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

Duplicates SB107.  
Relates to HB132 and SB129.

### **TECHNICAL ISSUES**

RLD/FID states: “At present, in regard to the SLA and the BILA, the FID only regulates loan activity for loans of \$5,000 or less. However, HB78 appears to place restrictions on all lending not originated by federally insured depository institutions, which exceeds the current limitation of the SLA and the BILA. For one example, as worded HB78 would also apply its interest rate and APR caps to loans made between private individuals or corporations, including loans of more than \$5,000. It is unclear from HB78 as to what entity, if any, would regulate/enforce the HB78 interest limits on the loans in this example.

HB78 also modifies reporting requirements for licensees to segment the APR on loans from the current range of zero to 175 percent, to zero to 36 percent.

Currently, licensees under the SLA are required to annually report their small loan activity for the prior calendar year by April 15. However, HB78 has an effective date of July 1, 2022. This discrepancy would create two data sets for year 2022, which could be difficult for licensees in terms of reporting and would likely result in error-prone data reported to the FID.

HB78 states that for loans made under the BILA and SLA, the calculation of APR should be made in terms of 12 CFR Part 1026, known as "Regulation Z" for loans up to \$5,000, but the procedure for loans larger than \$5,000 is unclear. As written in HB78, Section 56-8-9(C) NMSA, the calculation conflicts with Regulation Z and the BILA and SLA. HB78 institutes a “calculation of interest” in Section 56-8-9(C) that “shall include any periodic or nonperiodic interest, any periodic or nonperiodic finance charge, any ancillary products or services and any other charges or fees incident to the extension of credit.” Regulation Z provides that charges incident to the extension of credit are included in the calculation, dependent upon certain criteria. See chart below for a detailed breakdown of the determinations that must be made in order to know whether a specific charge will be included in the calculation of interest for a particular loan under Regulation Z.”

“FID recommends choosing a January 1, 2023, start date regarding changes in annual reporting in order to have a homogenous data set for a given year. Because the calculation of APR pursuant to Section 56-8-9(C) in HB 78 conflicts with both Regulation Z and the APR calculation in the SLA and BILA, FID recommends adopting the Regulation Z definition for calculating APR in Section 56-8-9(C) for consistency.”

### **OTHER SUBSTANTIVE ISSUES**

NMAG notes: “HB78 creates consistency with the Military Lending Act, 10 U.S.C. § 987(b) which establishes an APR at 36 percent.”

Further, HB78 would create consistency with surrounding states and, what appears to be, a growing number of states, choosing to establish lower APR's. Currently, according to the Center for Responsible Lending data as of February 2021, Arkansas, Arizona, Colorado, Connecticut, Georgia, Maryland, Massachusetts, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, South Dakota, Vermont and West Virginia — and D.C. cap payday loan interest at 36 percent or lower. Illinois joined those seventeen states last year also capping APR at 36 percent.”

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

The current cap of one hundred and seventy-five percent interest will remain in place.

JT/acv