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## FISCAL IMPACT REPORT

ORIGINAL DATE 3/5/2007

SPONSOR HHGAC LAST UPDATED \_\_\_\_\_ HB 1275/HHGACS

SHORT TITLE Lease or Rental Contract Jurisdiction SB \_\_\_\_\_

ANALYST Schuss

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Unknown	Unknown	Unknown	Recurring	General

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

The House, Health and Government Affairs Committee substitute for House Bill 1275 amends and adds new material to the Uniform Commercial Code Section 55-24-1 NMSA 1978 regarding lease and rental agreements.

If a consumer lease requires arbitration or mediation, the forum for these proceedings cannot be outside the state of residence of the lessee.

The committee substitute defines “lease or rental contract for equipment” as any public, private, foreign, or domestic contract or agreement relating to the temporary use of equipment without transfer of ownership. “Indemnify” or “hold harmless” is defined as any requirement to name the indemnified party as an additional insured on the indemnitor’s insurance coverage for the purpose of providing indemnification for any liability not otherwise allowed in the section.

It is void and unenforceable for a lease or rental contract for equipment to require a party to the agreement to indemnify, hold harmless, insure, or defend the other party to the agreement against any liability, claims or damages for the negligence, act or omission of the indemnitee or the indemnitor.

The provisions of the committee substitute do not apply to:

- Leases or rental contracts for a motor vehicle,
- Security agreements (Section 55-9-102 NMSA 1978),
- Finance leases (Section 55-9-2A-103 NMSA 1978), or
- Lease or rental contract for equipment for use in the production of motion pictures or television.

## **FISCAL IMPLICATIONS**

AOC notes that any fiscal impact on the judiciary would be proportional to increase in lease disputes heard in New Mexico’s courts. There may be an increase in the amount of work that needs to be done by the courts, thus requiring additional resources to handle increase.

## **SIGNIFICANT ISSUES**

AGO has included the following in their analysis:

The substitute bill would enact provisions rendering the choice of a “forum” for purposes of arbitration or mediation hearings in a consumer goods lease invalid if that forum is not the residence of the consumer, or “lessee”. Current law provides that if the *judicial* forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable. NMSA Section 55-2A-106(2). The substitute bill ties arbitration and mediation hearing forums to the residence of the lessee; current law ties the judicial forum to “jurisdiction over the lessee”, which is a broader concept. A consumer might maintain their residence outside of a forum, but still be subject to the jurisdiction of that forum.

With respect to the indemnification provisions, current law contains similar provisions governing construction contracts. NMSA Section 56-7-1.

BS/nt