F I S C A L   I M P A C T   R E P O R T

		ORIGINAL DATE	02/03/14		
SPONSOR	Herrell	**LAST UPDATED**		**HB**	199
SHORT TITLE	Title Loan Product Maximum Interest Rate			**SB**	
				ANALYST	Boerner

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		None	None			

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 199 would create a new statute that caps the interest rate on consumer title loan products at 25 percent per year. This bill only pertains to title loan products, which it defines as a loan transaction secured by a vehicle, and excludes from coverage purchase financing and installment loans. HB 199 defines installment loans, for purposes of the Act, as a loan paid in at least twelve substantially equal payments with a period of at least one year.

The AGO notes that the bill's definition of "installment loan" conflicts with the definition of "installment loan" contained in the New Mexico Small Loan Act.

FISCAL IMPLICATIONS

The AGO points out that while the bill attempts to limit the interest charged on loans issued by title lenders, certain ambiguities and exemptions in the bill's current version will allow the continuation of many of the potentially harmful practices that exist in the industry. The AGO recommends more comprehensive title lending or small loan lending legislation to ensure New Mexicans are protected from harmful lender practices.

BACKGROUND AND FISCAL IMPLICATIONS DETAIL

Car title loans carry high interest rates and fees, and the loans are deeply over-securitized. The New Mexico Financial Institutions Division reports that car title loan products carry, on average, annual percentage rates (APR) between 270 percent and 314 percent. In most instances, title loans do not require a credit check or other assessment of ability to repay; consumers typically only need to provide minimum income verification to receive the loan. Lenders are able to omit an underwriting process because the value of the collateral, the consumer's car, greatly exceeds the amount of the loan and lender's expenses.

Despite being fully collateralized, tile loans in New Mexico carry extremely high interest rates, according to the Financial Institutions Division, up to an APR of 652 percent. Because of the high interest rates, fees, minimum underwriting requirements, and the ability of the lenders to repeatedly roll over the loans month after month, consumers are placed at an increased risk of suffering financial hardship or falling prey to a hopeless cycle of debt.

While the bill attempts to limit the interest charged on loans issued by title lenders, current omissions and exemptions in the current version would allow the continuation of many of the potentially harmful practices that exist in the industry. For example:

- The bill fails to regulate the fees that a lender can charge related to a title loan. Across the small loan industry lenders use fees to evade caps on interest rates, effectively burdening consumers with onerous lending costs that do not take the form of interest.
- The bill does not prohibit the rolling-over of the original loan or subsequent roll-over title loans that could result in additional fees being charged and an increase in the debt burden on consumers who are unable to make progress reducing the loan principal. By permitting the rolling-over of title loans, lenders are permitted to exacerbate the consumer's already difficult financial situation.
- The exemption of installment loans, defined in the bill as a loan with twelve successive substantially equal payments to pay off the loan with a period of at least one year, will allow the title lending industry to circumvent all of the protections of the bill if enacted.
    - In New Mexico, lenders offer both 30 day car title loans and 12-18 month installment title loans. Already many of the title loans issued in New Mexico have a term of at least one year and 12 or more payments, and would therefore be outside of the scope of this bill. The Financial Institutions Division reports that in 2012, title lenders issued nearly 10,000 installment title loans in New Mexico.
    - Title lenders, which already roll-over short term loans multiple times, could simply structure loans for longer durations, effectively writing the practice of rolling loans over into the face of the agreement. Exempting installment loans would leave much of the present and future title lending industry unaffected.

In conclusion, this bill has a narrow focus on short duration title lending; the exclusion of coverage of other types of small loan lending fails to address the problems that exist across the industry and leaves open an opportunity for lenders to simply shift their title loan business to other practices.

After the passage of the Payday Loan Act in New Mexico, small loan lenders simply changed features of their credit products, lengthening the loan terms, dropping the post-dated check requirement, etc., and continued their previous practices. The end result is that New Mexico is no less inundated with high cost credit products than it was prior to the passage of the narrow Payday Lending Act. As title lending is generally more harmful that payday lending, these concerns need to be addressed. Bills aimed at the small loan industry must be comprehensive in order to have an impact even on the segment of the business they aim to change.

PERFORMANCE IMPLICATIONS

The AGO expresses further concern that the bill does not provide a mechanism for enforcement. The bill states it does not affect or limit any other provision of law pertaining to financial transactions; therefore, there is ambiguity as to whether the bill supplements or adds to the authority (licensing or otherwise) of the Financial Institutions Division or any other state department or authority. Likewise, the bill does not provide a private right of action or a means for public enforcement of the bill.

Additionally, the bill does not define or limit the scope of "title lender." This ambiguity makes it unclear whether out-of-state entities will be covered. The Bill should be clarified so that it clearly applies to any entity which offers title loans to New Mexico residents.

TECHNICAL ISSUES

Section 1(A)(1) of the bill setting the maximum interest rate at 25 percent is unclear whether the term "interest" includes any fees charged to the consumer as an incident to the extension of credit.

Section 1(C)(4) of the bill defining title loan products is unclear as to whether title loans are transactions secured by vehicles or title to a vehicle. This ambiguity may lead to nearly 100 percent of title loans falling outside the coverage of the bill, as title loans as presently offered in New Mexico are liens on the title of the car and not possessory liens on the cars themselves.

SUGGESTED AMENDMENTS

The AGO offered the following suggested amendments:

- Statutorily set minimum underwriting guidelines to include evaluation criteria to determine the consumer's ability to repay the loan;
- Prohibit the rolling-over of title loans;
- Require title loans to have repayment periods in excess of 30 days;
- Ensure that fees incidental to the extension of the title loan are included in the calculation of the "interest rate;"
- Include all title lending, regardless of length of loan or number of installment, within the protections offered by the bill;
- Integrate the bill into existing small loan regulations to ensure agency and licensing oversight, private and public rights of action, and to ensure that a larger percentage of high-cost lending is prevented through legislation.

CB/jl