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FISCAL IMPACT REPORT

SPONSOR	Chasey	**ORIGINAL DATE** **LAST UPDATED**	02/07/14	**HJR**	10
SHORT TITLE	Reduce Extension of Credit Interest Rate, CA			**SB**	
				ANALYST	Daly

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	**FY15**	**FY16**		
	($231.0)	($231.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		>$46.0		>$46.0	Nonrecurring	Election Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SJR 20
Relates to HB 199

SOURCES OF INFORMATION
LFC Files

Responses Received From
Attorney General's Office (AGO)
Public Regulation Commission (PRC)
Regulation & Licensing Department (RLD)

SUMMARY

Synopsis of Bill

House Joint Resolution 10 proposes to amend the Constitution to add a new section which sets a maximum lawful rate of interest charged or received for extending credit of 36 percent per year. 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 shall be included in calculating interest. Any contract entered into after January 1, 2015 that has a rate in excess of the maximum is void as to both principal and interest. If the United States prime lending rate exceeds ten percent, the maximum rate may exceed 36 percent per year but shall not exceed 30 percentage points in excess of the prime lending rate.

This limit will not apply to any federally insured depository institution or government-issued bonds.

This proposed amendment is to be submitted for approval by the people in the next general election (this coming November).

FISCAL IMPLICATIONS

Under Section 1-16-13 NMSA 1978 and the NM constitution, the SOS is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to ten percent of the registered voters in the state. The SOS is also required to publish them once a week for four weeks preceding the election in newspapers in every county in the state. In 2012, the cost for the 2012 General Election ballots was $46 thousand per constitutional amendment. However, if the ballot size is greater than one page, front and back, it would increase the cost of conducting the general election. In addition to the cost of the ballot, there will be added time for processing voters to vote and would mean additional ballot printing systems would be required to avoid having lines at voting convenience centers.

In addition, RLD/FID anticipates that, to the extent small loan licensees elect to discontinue their New Mexico business under a usury law, there will be a reduction in licensing fees, which will decrease revenues allocated to the General Fund. The $231 thousand figure reflected in the revenue table above is its estimate of that reduction.

SIGNIFICANT ISSUES

AGO provides this explanation of and reasons for this proposed amendment:

> It sets clear usury boundaries for statutory laws that govern the State and affirms the fundamental right to protect New Mexicans – particularly those who are financially at risk – from predatory lending. The proposed amendment incorporates a basic standard of fairness in lending and is consistent with existing protections for consumers found at Art II, Section 21 of the New Mexico Constitution: "No person shall be imprisoned for debt in any civil action"; and Art. II, Section 4: "all persons . . . have certain natural, inherent and inalienable rights, among with are the rights of acquiring, possessing and protecting property . . . ."
>
> Given the history of the high cost lending market, consumer experts throughout the country now advocate a 36% annual rate cap on the extension of credit as the most effective way to provide protections to financially at-risk borrowers and set viable limits to usury in the extension of credit. A 36% rate has been determined by consumer experts to permit reasonably priced loans to be made to borrowers who can afford to repay them while prohibiting destructive loans to borrowers who cannot. A 36% annual rate cap provides the framework for other legislative or regulatory efforts to address the lending industry's marketing and loan practices that have had an adverse impact on borrowers since deregulation occurred.

Further, AGO reports that the Department of Defense (DOD) has identified New Mexico as one of five states that has not made regulatory changes to promote enforcement of DOD's predatory lending regulations:

> Problems in the high cost lending industry and its impact on military service members has also been the subject of scrutiny by the Department of Defense. In August 2006, the DOD issued its "Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents". (DOD Report) That report reviewed short-term loans (payday, car title, and tax refund anticipation loans) and installment loans and found that "[p]redatory lending practices are prevalent and target military personnel…" It found that these lenders have characteristics in common such as: targeting borrowers who are financially at risk; marketing products with high fees/interest rates; taking advantage of the borrower's inability to pay the loan in full when due and encouraging extensions through refinancing and loan flipping with additional fees and little or no payment of principal; and evading usury limits or developing schemes to circumvent existing consumer protection laws. The DOD recommended:
>
> "Lenders should be prohibited from directly or indirectly imposing, charging, or collecting rates in excess of 36 percent APR with regard to extensions of credit made to Service members and their families. This APR must include all cost elements associated with the extension of credit…"
>
> In response, Congress enacted a 36% rate cap for short-term loans to the military and families for loans with terms less than 91 days, effective in 2007. However, lenders continue to target military personnel evading the 36% rate cap by offering longer-term loans (more than 91 days) to military personnel with triple digit rates.

The Financial Institutions Division of RLD (RLD/FID) comments that although SJR 20 would apply to all types of lenders, with respect to the New Mexico industries it regulates, the fixed interest rate contemplated by SJR 20 would primarily affect small loan lenders who issue short-term loans to individuals who otherwise cannot access loans through traditional forms of banking. RLD/FID explains that currently, small loan lenders offset the risk of lending on a short term basis with an interest rate to ensure timely repayment of the loan. That agency anticipates that many small loan licensees who operate as branches or franchises of national companies would elect to discontinue their New Mexico business under a usury law such as SJR 20. Additionally, RLD/FID notes that as drafted, SJR 20 applies to many types of lenders that are not regulated by that division or another state agency, including commercial lenders, pawnbrokers and student loan lenders.

DUPLICATION, RELATIONSHIP

SJR 20 duplicates this resolution.

This resolution is related to HB 199, which sets a 25 percent per year limit on interest rates on car title loans.

OTHER SUBSTANTIVE ISSUES

AGO provides this background information concerning the history of high cost lending in New Mexico:

> Prior to 1981, New Mexico restricted interest rates on lending by statute. Usury caps were "deregulated" in 1981 in response to inflation in the mortgage market place. The deregulation of all usury limitations resulted in the development of numerous loan products charging ever-increasing interest rates and marketed to New Mexicans with limited financial means. By the mid- 2000's, the typical loans being offered in New Mexico included installment loans, payday loans, household goods loans and car title loans. Installment loans were offered either as simple interest loans or pre-computed interest loans. By 2005, common rates charged ranged from 80% to 600%. It was common for borrowers to roll their loan over several times without ever reducing the principal obligation due and owing. This rollover routine is linked to borrowers being trapped in a cycle of debt, paying back many times the small amounts financed on their loans over an extended period of time.
>
> The payday loan products offered in New Mexico before 2007 were (at least notionally) short-term loans amortized over a 14-to-30-day term, and carried an average effective interest rate of 561%. Though the payday loans were written to be short-term loans with one-time payments, in practice they created much longer payment obligations. Prior to the 2007 payday loan reform provisions, the loans could be rolled over, renewed, or extended for an unlimited period of time. A rollover occurs when the borrower cannot retire the entirety of a payday loan obligation—i.e. the principal amount plus the interest and/or fee charged per $100 borrowed—and allows the borrower to pay back only interest and fees while "rolling over" the entire principal amount financed into a "new" loan. The cause of the debtor's inability to pay off the principal owed was the cost of the credit – the high interest rates charged – and the borrower's limited financial resources and income.
>
> The rollover routine was obviously the rule, rather than the exception, of payday lending, and reported abusive lending practices and the rates of interest charged focused legislative attention on payday loans, prompting the legislature to enact ameliorative measures set forth in the Small Loan Act ("SLA" or the "Act"). Sections 58-15-31 through 39 NMSA 1978.
>
> The effort to reform payday lending in New Mexico reflects the legislature's overriding concern that high-cost loans can trap borrowers in a cycle of debt. Unfortunately, contrary to the prohibitions enacted in 2007 for payday loans, high cost lending has continued unabated, lenders have shifted their loan products to evade any consumer protections, rollovers continue, the no-cost repayment plan provided for payday loans is infrequently implemented, and consumers continue to be trapped in long-term, high cost indebtedness.
>
> After 2007, many lenders shifted from offering payday loans to offering long-term installment loans, car titles loans, and other high cost loan products with

rates averaging 350% per year with a reported interest rate high in excess of 2,000% per year. These loans include high cost interest rates, rollovers, and long-term indebtedness. Loan products currently being offered in New Mexico include payday loans, installment loans, car title loans, household goods loans and refund anticipation loans.

RLD/FID currently tracks data on payday loans and non-payday loan products with interest rates in excess of 175% per annum. The lending practices of installment lenders making loans with interest rates of less than 175% - for examples rates of 85% to 150% - are not currently tracked as a result of industry lobbying efforts that succeeded in excluding this market from scrutiny. However, anecdotal information on this niche in the lending market is available.

Available FID data and reported consumer experience demonstrates that rollovers and long-term indebtedness continue to be a prevalent problem in the high cost market for loans with interest rates ranging from 85% to in-excess of 1,000% per year. FID reported that in 2012 the incidence of rollovers in the payday loan market actually increased to 6.6 loans per customer per year, demonstrating the failure of the 2007 law to prevent consumers from long-term indebtedness, or, debt trap. For all other reported loan products, FID data states that 396,000 loans were made for a total of $216 million and that approximately $99 million was paid by consumer in interest and fees for this one year period. On average 41% of non-payday loans are rollovers, renewals or refinanced loans. The debt trap is a function of the longer-term obligation that the multi-month installment loan products create, coupled with the inability of the borrower to repay the loan when due.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AGO predicts that, if HJR 10 does not become law, high cost lenders will continue to charge financially strapped borrowers interest rates of 85 percent to 1500 percent or more; New Mexico families will expend $100 million or more in interest and fees for these loans; borrowers will continue to be plagued by long-term indebtedness through rollovers and refinanced loans because the high cost prohibits borrowers from paying the loans off when due; and other adverse affects of the sub-prime (non-mortgage) lending market will continue unabated.

MD/jl