FISCAL IMPACT REPORT

		ORIGINAL DATE	2/24/15		
SPONSOR	Lundstrom	**LAST UPDATED**	3/6/15	**HB**	425/HRPACS
SHORT TITLE	Limit Certain Loan Fees & Charges			**SB**	
				ANALYST	Elkins

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate	Indeterminate			

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB356, SB527, and SB579
Conflicts with HB24, HB36, SB72, HB356, and SB527

SOURCES OF INFORMATION
LFC Files

Responses Received From
Regulation and Licensing Department (RLD)
Administrative Office of the Courts (AOC)
Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Regulatory and Public Affairs Committee Substitute for House Bill 425 amends the New Mexico Small Loan Act of 1955 (SLA), the New Mexico Bank Installment Loan Act of 1959 (BILA), and the Money, Interest, and Usury Statute (Usury). The bill requires a loan with a principal amount of $2,500 or less be made under SLA and BILA. Loans made under SLA and BILA will be exempt from any provision established in Usury. The bill established a minimum maturity term of 120 days for loans made pursuant to BILA. Also, the bill establishes a minimum maturity term of 180 days for installment loans, and a maturity term between 90 and 180 days for short-term installment loans made pursuant to SLA.

The bill amends and establishes new fees permissible under SLA and BILA. The fees include an increase of allowable delinquency fees, a one-time processing fee of 10 percent of the original loan amount, a monthly handling fee of 7.75 percent of the original loan amount, and a one-time fee of $35 for insufficient bank funds. The bill also eliminates the $25 processing fee permissible under BILA and replaced it with 10% or less of principal.

The bill prohibits a lender from making a loan under BILA if the borrower has an open loan under SLA with that same lender unless the SLA loan is paid with the proceeds of the BILA loan.

The bill establishes allowable loan products under SLA. No lender shall make a loan pursuant to the SLA unless the loan is an installment loan, short-term installment loan, payday loan, or refund anticipation loan. It also establishes that simple interest must be applied to short-term installment loans made pursuant to SLA. HB 425 deems a short-term installment loan paid-in-full when a borrower has paid an aggregate of fees and interest, excluding processing fees, equal to the original loan amount in addition to the original principal amount.

House Bill 425 requires the lender to obtain information as to the borrower's ability to repay, based on disposable income, for installment loans and short-term installment loans made pursuant to SLA. If the loan requires a payment that exceeds 35 percent of the borrower's disposable income, the lender is prohibited from making the loan. This provision excludes payday loans and refund anticipation loans.

The bill also establishes exclusive regulatory authority over SLA and BILA to the State of New Mexico.

FISCAL IMPLICATIONS

The Financial Institutions Division (FID), currently licenses lenders making loans within the provisions set forth in SLA. FID cannot determine the number of licensed lenders, if any, that will abstain from renewing a small loan license as a result of this bill. License renewal fees, in this area, are a minimum of five-hundred dollars plus seventy-five cents per one-thousand dollars of loans outstanding at December 31 of the preceding year. Each licensee is also assessed a two-hundred dollar examination fee. Therefore, for each licensee that does not renew an existing small loan license or for every new licensee, there will be a revenue impact of seven-hundred dollars.

SIGNIFICANT ISSUES

According to RLD, HRAPC substitute for HB 425 specifically excludes loans that exceed $2,500. Also, the bill prohibits a lender from making a loan under BILA if the borrower has an open loan under SLA with that same lender unless the SLA loan is paid with the proceeds of the BILA loan. However, it does not address the reverse situation.

The Administrative Office of the Courts offers the following commentary:

> In *State ex rel. King v. B&B Inv. Grp., Inc.*, 2014-NMSC-024, 329 P.3d 658 (2014), the NM Supreme Court reviewed a district court decision involving "signature loans": small-principal, high-interest, unsecured loans that fell outside the purview of the SLA, because they did not fit the definition of either payday loans or installment loans under the SLA. The *King* defendants were making signature loans carrying APRs between 1,147.14 and 1,500 percent. In describing at length the defendants' marketing approach and deceptive practices, the court stated:
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> Defendants extend signature loans to the working poor; they lend exclusively to people

who provide proof of steady employment but who, by definition, are either unbanked or underbanked. The state's expert testified, and defendants admit, that signature loans are "alternative financial services." All signature loan borrowers are at least underbanked, and those borrowers without a checking or savings account are unbanked. These borrowers are highly likely to live in poverty: in New Mexico, one-third of all unbanked households and almost one-quarter of all underbanked households earn less than $15,000 per year. (Federal Deposit Insurance Corporation, *supra*, Detailed State and MSA Tables, Appendices H-I, Table H-68, Household Banking Status by Demographic Characteristics: New Mexico at 71) Borrowers' testimony bears out the fact that defendants target the working poor.

In finding the defendants' practices to be procedurally and substantively unconscionable, the court noted:

The Legislature enacted the Small Loan Act in 1955 to, among other factors, "insure more rigid public regulation and supervision of those engaging in the business of making small loans, and . . . to facilitate the elimination of abuse of borrowers." Section 58-15-1(D) NMSA 1978. The Legislature was concerned with the exploitation of borrowers, declaring "experience has proven . . . that without regulations, borrowers of small sums are often exploited by charges generally exorbitant in relation to those necessary to conduct a small loan business." Section 58-15-1(C) NMSA 1978. This statutory language about exploitation and abuse evinces a consumer- protective public policy goal. At the time the Small Loan Act was enacted, New Mexico had an interest rate cap of 12 percent for unsecured debts such as small installment loans, which Defendants now offer at between 1,147.14 and 1,500 percent interest. NMSA 1978, § 56-8- 11 (1957), *repealed by* 1981 N.M. Laws, ch. 263, § 4 (July 1, 1981).

TECHNICAL ISSUES

According to the Attorney General's Office, the biggest issue with this bill is that it obfuscates the cost of credit to the point that it is very difficult to discern what are the permissible interest rates and charges for the different products. The wording of the fee cap provisions will make enforcement of the statute very difficult because potential violations would have to be determined based on assessment of individual loan files instead of clear disclosures of interest rates that is currently required under the Small Loan Act through the Financial Institutions Division. Additionally, by terming the costs of the loan as fees and charges instead of interest may mislead the borrower as to what the real interest rate is on the loan product and could lead to potential Truth In Lending Act conflicts or violations. Finally, the fee caps, especially for the Short-Term Installment Loans may still violate current law as to unconscionable fees and terms.

According to AOC, there is a question whether the substitute bill's amendments and enactments, including the following, will provide sufficient clarity to satisfy the AGO's concerns: Section 58-7-3.1 NMSA 1978 (requiring rather than permitting, the interest charge in a precomputed loan transaction to be calculated on the assumption that all scheduled payments will be made when due); and Section 14(B) (1) through (6); and Section 15 (prohibiting a licensee from making a loan to a consumer in which monthly payments exceed 35% of the consumer's disposable income).

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