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

SPONSOR Neville **ORIGINAL DATE** 3/3/15 **LAST UPDATED** **HB**

SHORT TITLE Limit Certain Loan Fees & Charges **SB** 579

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)

Duplicates HB 425
Conflicts with HB 24, HB 36, SB 72, HB 356, and SB 527

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

Senate Bill 579 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 and 90 days for loans made pursuant to SLA, except for payday loans.

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 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.

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, page 3 lines 24 and 25, page 4 lines 1 through 5, page 19 lines 9 through 21, does not address loans in excess of $2,500. Small loan licensees will continue to have the option to make these loans that exceed the $2,500 threshold. Since there is no cap established in Usury, small loan licensees may exceed any established cap set forth in the bill on loans made above $2,500.

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).

The SB 579 amendments to the SLA bring these signature loans within the purview of the act.

CONFLICT

Page 18, line 25 and page 19 lines 1 and 2, contradicts with provision set forth in HB 356 and Senate Bill 527 (the proposed Refund Anticipation Loan Act). The bill states that no loan shall be made with a maturity of less than 90 days unless it is a payday loan. However, in the proposed Refund Anticipation Loan Act the minimum maturity term of this loan product is 15 days with a maximum maturity term of 31 days.

TECHNICAL ISSUES

According to RLD, page 23 lines 2 through 7 (Provision 1) contradicts the calculation established on page 23 lines 8 through 15 (Provision 2). Provision 1 established an aggregate cap of 2 times the principal amount on all principal, interest, and fees paid to the licensee at which point the loan is considered to be paid in full. Provision 2 excludes a processing fee and adds an additional prorated amount equaling the number of days in the stated term multiplied by 0.055 percent.

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.

CE/je/bb/je