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FISCAL IMPACT REPORT

SPONSOR Roybal Caballero **ORIGINAL DATE** 1/18/17
LAST UPDATED 2/20/17 **HB** 26

SHORT TITLE Small Loan Interest Rate Caps **SB** _____

ANALYST Downs

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
(\$70.0 - \$210.0)	(\$70.0 - \$210.0)	(\$70.0 - \$210.0)	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

Relates to House Bill 100, House Bill 347, House Bill 368, House Bill 438, House Bill 480, Senate Bill 15, Senate Bill 398, and Senate Bill 414.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AGO)
 Regulation and Licensing Department (RLD)
 Public Regulation Commission (PRC)
 Mortgage Finance Authority (MFA)

SUMMARY

Synopsis of Bill

House Bill 26 amends the New Mexico Bank Installment Loan Act of 1959 (BILA), the New Mexico Small Loan Act of 1955 (SLA), and Section 56-8-9 NMSA 1978, the Money, Interest, and Usury statute. While the short title for this bill has been listed as “Small Loan Interest Rate Caps,” it should be recognized that the annual percentage rate (APR) cap that would be mandated by the bill actually applies to essentially all extensions of credit (other than extensions of credit made by any federally insured depository institution or government-issued bonds) in the State of New Mexico.

Specifically, House Bill 26 establishes an interest rate cap of 36 percent per year, with an exception allowing a higher cap in the event that the U.S. prime lending rate exceeds ten percent, and requires that the calculation of interest to include interest, finance charges, other products or

services, and charges or fees that are included in the terms of the loan. The bill provides that any contract for such loans entered into after July 1, 2017, that has an interest rate over 36 percent is void as a matter of law. The bill also repeals §58-15-33 NMSA 1978 (Payday loan products; permitted charges, 2007) which outlines permitted charges for Payday loan products.

FISCAL IMPLICATIONS

According to RLD, this bill would reduce the number of small loan licensees. There would be a reduction in license revenue of \$700 for every small loan licensee that does not renew their license. For every one hundred licensees that do not renew, the division would see a revenue reduction of \$70 thousand. RLD also indicated additional oversight will be required in the event of the passage of this bill, which could require additional FTE in the agency. The average cost per position at RLD is \$97.1 thousand.

SIGNIFICANT ISSUES

Interest rates in New Mexico are not regulated by statute, with the limited exception of the effective 400 percent rate for “payday loans” in the Small Loan Act and a cap of 15 percent for loans in which the interest rate is not specified, Section 56-8-3 NMSA 1978. In 2014 the New Mexico Supreme Court issued a decision, *State of New Mexico et al v. B & B Investment Group Inc. et al*, holding that certain interest rates were unconscionable, ordering restitution of all interest in excess of 15 percent of the loan principal for the loans identified in the suit.

The Attorney General reported that the New Mexico Financial Institutions Division’s (NMFID) 2015 Annual Report indicates that interest rates vary wildly in New Mexico, ranging from 0 percent to 456.3 percent on title loans, 929 percent on unsecured installment loans, 600 percent on installment loans secured with a vehicle title, 5,460 percent on secured installment loans, 9,000 percent on refund anticipation loans, and 386.3 percent on other loan products. Many of these interest rates exceed those found by the Supreme Court in *B & B Investment Group Inc.* to be unconscionable.

The New Mexico Mortgage Finance Authority (MFA) makes low-interest mortgage loans for affordable homeownership and also administers a number of loan programs for affordable housing development and rehabilitation. All of these loan programs have interest rates and points well below the caps proposed in House Bill 26.

OTHER SUBSTANTIVE ISSUES

The Military Lending Act was signed into law in 2007, placing an all-inclusive 36 annual percentage rate (APR) cap on loans made to all active military personnel and their families. According to the Corporation for Enterprise Development (CFED), 17 states and the District of Columbia (D.C.) prohibit or cap APRs for payday loans at 36 percent or lower. Twenty-nine states and D.C. cap or prohibit vehicle title loans, and 20 states and D.C. cap small dollar installment loans. Four states do not prohibit or cap APRs for small consumer loans. New Mexico caps APRs for payday loans at about 400 percent by limiting administrative fees on loans with maturities between 14 days and 35 days to \$15.50 for every \$100 of principal borrowed. The law does not place restrictions on loans that fall outside of its definitive scope, which includes loans with principals greater than \$2,500 or terms exceeding 35 days.

A 2010 University of New Mexico study of 199 New Mexicans found that over 82 percent thought credit card interest rates should be capped at 25 percent or less, and over 72 percent felt that storefront or short-term loans should be capped at 25 percent or less. In 2014 Public Policy Polling surveyed 601 New Mexico voters and found 80 percent of participants would support a change in state law lowering the maximum annual interest rates lenders could charge from 300 percent to 36 percent, even if the resulting cap would force some lenders to lay off employees or close stores. According to The Pew Charitable Trusts, states with high or no rate caps have the most payday loan stores per capita, and states with lower rates have fewer stores but similar loan volumes. There are no payday loan stores in the 15 states that prohibit payday lending or interest rates higher than 36 percent.

A 2013 national survey by the Federal Deposit Insurance Corporation found that nearly 30 percent of New Mexico households reported using one or more alternative financial services (AFS) such as non-bank money orders, non-bank check cashing, non-bank remittances, payday loans, pawn shop loans, rent-to-own loans, and refund anticipation loans. Households that reported using one or more AFS tended to be Hispanic, 25 to 34 years of age, employed, disabled, and unbanked. Most AFS users were not homeowners, lacked a high school degree, and reported family income less than \$15 thousand. According to the CFED 2014 Assets and Opportunity Scorecard, about 44.4 percent of households in New Mexico were “liquid asset poor,” meaning they had less than three months’ worth of savings (measured as \$5,887 for a family of four or three times monthly income at the poverty level). About 56 percent of U.S. consumers have subprime credit scores, and many use AFS products to complement or meet financial needs.

In 2015, the Consumer Financial Protection Bureau released a proposal to limit certain practices for payday, vehicle title, and similar loans. The proposal set ability to repay and alternative lending requirements for “covered loans” which the federal bureau defined as “short-term credit products with contractual durations of 45 days or less and longer-term credit products with an all-in APR in excess of 36 percent where the lender obtains a preferred payment position by either obtaining access to repayment through a consumer’s account or paycheck or a non-purchase money security interest in the consumer’s vehicle.”

A 2005 Federal Deposit Insurance Corporation (FDIC) working paper found fixed operating costs and high loan loss rates justified a large part of the high APR charged on payday advance loans. In 2010, the FDIC concluded a two-year pilot program to study the feasibility of banks offering affordable small-dollar loan products. Participating banks provided loan amounts up to \$2,500, annual percentage rates of 36 percent or less, low or no fees, streamlined underwriting, and loan terms of 90 days or more. The pilot found that the interest and fees generated were not always sufficient to achieve robust short-term profitability. Rather, most pilot bankers sought to generate long-term profitability through volume and by using small-dollar loans to cross-sell additional products.

Credit unions, community development financial institutions (CDFI), community loan centers, and some lenders have been able to provide small loan products within an APR cap of 36 percent. Credit unions like Government Employees Credit Union are able to offer small loans at an APR of 27.9 percent. Native Community Finance, a CDFI, is able to provide financial counseling and refinance loans at APRs less than 15 percent for subprime borrowers. Applicants that demonstrate an ability to repay the loan are generally offered fixed-term loans from \$400 to \$5,000 with maturities greater than six months. Since 2007, Native Community Finance has written off a total of \$1,127 on these loan products.

TECHNICAL ISSUES

RLD noted concern with the lack of definition for “ancillary products or services,” and stated one should be added to avoid confusion over what types of products are included in the annual rate calculation. It also expressed concern with the repeal of all administrative fees on payday loan products, effectively eliminating those products, while leaving intact the remaining provisions of the Small Loan Act, which are specific to payday loan products. RLD stated that with the repeal of this section, the Payday Loan Database, required by the New Mexico Small Loan Act of 1955, loses its funding source. The database provider has not provided a cost for maintaining the database for the six month period.

RELATIONSHOIPS AND CONFLICTS

The following bills relate to HB 100 through the amendments to the New Mexico Small Loan Act and the New Mexico Bank Installment Loan Act:

“Small Loan Interest Rate Caps”, SB 15, effectively caps the Annual Percentage Rate to 36% applicable to all loans.

HB 100, “Short Term-Loan Positive Credit Reporting”, requires reporting solely for positive loan performance.

HB 347, “Installment Loan Fee Limits & Literacy Fund”, limits fees and charges for certain installment loans and providing for reporting to credit agencies on all loan performance. HB 347 substitutes a fee-based financing structure for all small loans under \$5,000; eliminates payday loans; and exempts refund anticipation loans from its coverage. HB 347 outlines a monthly handling fee capped at 7 ¾% percent.

“Small Loan Act Requirements”, HB 368 and SB 398 shift the reporting on transactions to a more comprehensive annual reporting by loan product. These bills require the licensees to produce an annual report to FID no later than March 31st. Failure to report to FID on time will result in suspension of license and a fine of \$1,500 per day until the report is filed. HB 368 and SB 398 have a unique conflict with HB 347. HB 368 requires each SLA licensee to report the total dollar amount of “interest”. HB 347 refers to a capped monthly “handling fee” at 7 ¾%. If both bills were to pass as written, licensees would be required to report the proposed “processing fee” and may be exempt from reporting the proposed “handling fee”.

“Disclosure of Tax Refund Loan Fees”, HB 438 and SB 414, requires disclosures of fees and interest associated with tax refund anticipation loans. This legislation establishes requirements, permitted charges and prohibited acts for tax refund anticipation loans.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the AGO, interest rates in New Mexico will continue to be unregulated and the question of what a legally permissible interest rate is will remain. The only option left by the Supreme Court’s decision in *B & B Investment Group* is to strike down overly high rates case by case. Without regulation establishing acceptable interest rates, borrowers may continue to be taken advantage of.