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

SPONSOR SCORC **ORIGINAL DATE** 02/24/17 **LAST UPDATED** 03/10/17 **HB**

SHORT TITLE Installment Loan Fee Limits **SB** 388/SCORCS

ANALYST Amacher

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY18	FY19		
Indeterminate	Indeterminate	Recurring	Financial Literacy Fund (See Fiscal Implications)

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
	($210.0)	($210.0)	Recurring	See Fiscal Implications

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate	Indeterminate	Indeterminate	Recurring	Financial Literacy Fund (See Fiscal Implications)

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates/Conflicts with SB 15, SB 144, SB 398, and HB 26, HB 100, HB 347, HB 368, HB 438, HB 480

SOURCES OF INFORMATION
LFC Files
Office of Attorney General (OAG)
Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of the SCORC Substitute

The Senate Corporation and Transportation Committee Substitute for Senate Bill 388 amends the New Mexico Small Loan Act and the New Mexico Bank Installment Loan Act limiting fees and charges for certain installment loans and providing for reporting to credit agencies. As proposed, this bill would eliminate payday loans. The provisions outlined in this act are not applicable to federally insured depository institutions which include credit unions and savings & loan companies. This bill creates the Financial Literacy Fund. The effective date of this bill January 1, 2018.

FISCAL IMPLICATIONS

The Regulation and Licensing Department has provided the following:

> The Financial Institutions Division (FID), currently licenses lenders making loans within the provisions set forth in the New Mexico Small Loan Act (SLA). The FID cannot predict the number of licensed lenders that might abstain from renewing a Small Loan license as a result of this bill. License renewal fees, in his area, are a minimum of five hundred dollars ($500) plus seventy-five cents per one thousand dollars ($1,000) of loans outstanding on December 31st of the preceding year. Each licensee is also assessed a two hundred dollar ($200) examination fee. Therefore, for each licensee that does not renew an existing Small Loan License, there will be a minimum revenue reduction of seven hundred dollars ($700). See table below.
>
> ***Minimum Revenue Reduction (in thousands) by RLD***

100 License Reduction	$70
200 License Reduction	$140
300 License Reduction	$210

> The bill also creates the Financial Literacy Fund. A non-reverting fund appropriated to the FID for the purpose of developing and implementing financial literacy programs throughout the state of New Mexico. All licensees would be required to pay an annual fee of two hundred dollars ($200). The FID currently licenses approximately 673 small loan companies that would be subject to the new fee. However, the FID is unable to determine how much revenue would be generated for the Financial Literacy Fund.

SIGNIFICANT ISSUES

The Senate Corporation and Transportation Committee Substitute for Senate Bill 388 amends the New Mexico Small Loan Act and the New Mexico Bank Installment Loan Act limiting fees and charges for certain installment loans and providing for reporting to credit agencies. As proposed, this bill would eliminate payday loans. The provisions outlined in this act are not applicable to federally insured depository institutions which include credit unions and savings & loan companies. This bill creates the Financial Literacy Fund. The proposed effective date is January 1, 2018 and the legislation would be prospective, applying only to loans made after the effective date.

This bill introduces a cap to the Bank Installment Loan Act (BILA) and increases the existing $2,500 cap in the Small Loan Act (SLA). As outlined, a lender may increase the permitted late fees from $.05 to $.10 per dollar and increases total maximum late fees from $10 to $25. Notably, as proposed in this bill, the one-time charge of $25 is eliminated for document preparation and is substituted with a processing fee of up to 10% of the loan amount, a handling fee of 7.75% per month and a non-sufficient fund fee of $35. This bill requires that the loan term must be at least 120 days, with a minimum of four installments of substantially equal payments of principal and interest. However, these provisions are not applicable to federally insured depository institutions, which includes credit unions and savings & loan companies (whether such institutions are chartered at the national level or at the state level.)

The provisions require loans made in amounts less than or equal to $5,000 may be made only pursuant to the BILA or the SLA. Loans are repayable in a minimum of four installments of substantially equal payments of principal and interest. No lender, other than a federally insured depository institution, shall make a loan pursuant to the BILA (or the SLA) that has an annual percentage rate (APR) greater than 175%, calculated as defined by federal regulations at 12 CFR 1026 (commonly known as Regulation Z.) This then support a usury rate of 175% APR for most loans made under the BILA.

The provisions outlined in Section 6 do not apply to refund anticipation loans. A refund anticipation loan is defined as a "loan that is secured by or that the creditor arranges or expects to be repaid, directly or indirectly, form the proceeds of the consumer's federal or state personal income tax refunds or tax credits, including any sale, assignment or purchase of a tax refund or tax credit at a discount or for a fee."

This proposed legislation mandates a credit reporting requirement for loans made under the BILA and the SLA.

This bill requires the Financial Institutions Division of the Regulation and Licensing Department (RLD) to produce an annual report by July 1st regarding installment loans entered into by licensees under the SLA and additional reporting on the Small Loan industry. This report is produced by the FID directly pulled from the data required to be reported by SLA licensees as outlined under Section 31 of this bill.

The HBIC Substitute for House Bill 347 creates the Financial Literacy Fund to be administered by the RLD. This fund is supported through the proposed $200 annual licensing fee. The RLD and the Attorney General are tasked in developing and implementing a curriculum to carry out the purposes of the Financial Literacy Fund. Program elements must include a basic understanding of budgeting; checking and savings accounts; credit and interest; and additional considerations in the how and when financial services are used.

The bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

PERFORMANCE IMPLICATIONS

The SCORC Substitute for Senate Bill 388 requires the Office of the Attorney General (OAG) to work with RLD to develop and implement curriculum for financial literacy programs, which

requires additional resources and staff time. This may impact the agency's other performance based budget targets.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

CS/SB 388/SCORC conflicts with HB 100 in that CS/SB 388/SCORC requires mandatory credit reporting for all loan performance. HB 100 requires reporting solely for positive loan performance.

SB 388/SCORCS conflicts with what once was the duplicate bill CS/CS/HB 347/HJC in that SB 388/SCORCS addresses refund anticipation loans, permitted late payment and insufficient fund fees, and ensured refund anticipation loans were not subject to the amended provisions of both the BILA and the SLA.

The following bills relate to CS/SB 388/SCORC 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 and HB 26 duplicate HB 480; effectively cap 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.
>
> "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.
>
> "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.
>
> "Small Loan Interest Rates", HB 480 establishes an interest rate cap of 36% 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 36% interest rate cap as proposed in HB 480, HB 26, and SB 15 which is applicable to all loans, directly conflicts with CS/SB 388/SCORC, CS/CS/HB 347/HJC, HB 438 and SB 414.

OTHER SUBSTANTIVE ISSUES

RLD indicates the proposed changes that prohibit any lendor from making a loan with less than 120 days maturity would effectively require title loan licensees to alter their business model. Instead of making short term title loans with repayment in a single payment within 30 days the bill would require longer term loans.

RLD indicates that even though there is the proposed repeal of all FID annual reporting requirements to the legislature, this bill does not repeal the annual reporting requirement of each SLA licenses to the FID of all loans made above the annual percentage rate of 175%.

The discontinuance of Payday Loan Database is a concern of RLD. Payday lenders currently fund the database through the fifty cent ($0.50) administrative fee assessed on new payday loan transactions. RLD comments that if the fees are eliminated by the repeal of the Payday Loan Products; Permitted Charges (Chapter 58-15-33 NMSA 1978) the database will no longer be funded. However, loans with an outstanding balance will require the database to remain operable until fruition. RLD states that it will be necessary for the database to remain operational for six months from the effective date of this bill. The borrowers will have the ability to enter a payday loan payment option for a minimum of 130 days. The database provider has not provided a cost for maintaining the database for the six month period.

RLD highlights that the proposed changes regarding the borrower repayment method option would result in allowing lenders to limiting a borrower's choice of repayment methods. As proposed in this bill, language that prohibits lenders from requiring the use of postdated checks or debit authorizations for repayment as a condition of making the loan is removed. The elimination of this language from the current statute allows the lender the choice in repayment methods.

RLD suggests considering amending the language of Sections 9 through 23 to specify the authority of the Director of FID as opposed to the more general language of "the state". This may provide clarification on the authority of "the state", and the appropriate jurisdiction, regarding the terms and conditions of loans made pursuant to the BILA. Currently, RLD points out that the Director of FID is authorized to issue regulations that effectuate the purposes of the BILA.

The OAG indicates this bill explicitly pre-empts counties, municipalities and other political subdivisions by providing the state exclusive jurisdiction and authority over the regulation of small loans.

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.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Payday loan and single pay title loan products will continue to be available and permissible.

JMA/sb/jle