Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov).

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

SPONSOR Cadena/Lundstrom/ Hochman-Vigil **ORIGINAL DATE LAST UPDATED** 2/3/22 **HB** 172

SHORT TITLE Interest Rates on Certain Loans **SB**

ANALYST J. Torres

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY22	**FY23**		
NFI	$100.0	Non-recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB107, SB129, HB78, and HB132.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Indian Affairs Department (IAD)
Aging and Long-Term Services Department (ALTSD)
Early Childhood Education and Care Development (ECECD)
Regulation and Licensing Department, Financial Industries Division (RLD/FID)

Response Not Received From
New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of Bill

House Bill 172 reduces the maximum interest rate from the current 175 percent for consumer loans up to $5,000 to: 1) a possibly variable 36 percent (depending on the behavior of the prime rate of interest, up to a limit of 30 percentage points above prime) for loans above $1,100, and 2) to 99 percent for loans up to $1,100. When prime exceeds 10 percent, HB172 limits the rate on loans above $1,100 to a maximum of 30 percentage points above the prime rate. These interest rates will also apply to loans made pursuant to Money, Interest and Usury Section 56-8-9 NMSA 1978.

HB172 modifies licensee small loan reporting requirements on the new maximum allowed rates;

voids non-compliant loans made on or after October 1, 2022; and tasks RLD/FID with recommending appropriate interest rates and regulations for loans up to $5,000 as of January 1, 2023.

By placing an interest rate limit on loans of all sizes, and removing language related to business or commercial loans, HB172, expands FID's regulatory coverage for consumer loans to cover all lending made by non-depository institutions.

This change potentially expands the number of lenders making regulated loans, and greatly expands the number and amounts of regulated loans made. HB172 does not contain an appropriation to provide FID with staffing and other necessary resources to expand its capacity to regulate lenders and lending beyond its current SLA /BILA oversight.

HB172 appropriates $100 thousand to the FID for fiscal year FY23 to hire experts and other resources to assist in determining and recommending to the Legislature: appropriate interest rates on SLA/BILA loans of $5,000 or less; methods for regulating and prohibiting predatory practices; and methods for insuring credit access for those with low credit ratings. Input from all interested parties, including NMAG, lending institutions, tribes, pueblos, and consumer protection organizations should be considered.

The effective date of this bill is October 1, 2022.

FISCAL IMPLICATIONS

RLD/FID notes: "[c]hange in revenue projections for HB172 are indeterminate due to the uncertain impact that a combination of the proposed changes to licensing requirements and maximum allowable APRs. The FID does not have data on any non-depository lending that exceeds $5,000.

New licensees under the SLA are assessed fees totaling $1,900. This total is comprised of a $1,000 investigation fee, a license fee of $500, a $200 examination fee, and $200 financial literacy fee. License renewal fees are a minimum of $900. This is comprised of the fixed licensing fee of $500 plus a variable component of 75 cents per $1,000 of loans made under the Small Loan Act that are outstanding as of December 31 of the preceding year. Renewal licensees are also assessed a $200 exam fee and $200 financial literacy fee."

ALTSD, IAD, and ECECD indicate no fiscal implications.

SIGNIFICANT ISSUES

IAD states:

> HB172 provides for the Financial Institutions Division of the Regulation and Licensing Department to hire consultants to develop a recommendation on the appropriate interest rates or other regulations for loans in the amount of $5,000. The recommendation is to include regulatory measures to prohibit predatory practices by lenders and to assure that New Mexicans, with low or poor credit ratings, continue to have access to credit. In developing the recommendation, input is to be received from the Office of the Attorney General, lending institutions, tribes and pueblos, and consumer protection organizations.

> The State-Collaboration Act requires state agencies to develop and implement a policy that promotes effective communication and collaboration between the state agency and Indian nations, tribes or pueblos. Section 11-18-3 NMSA 1978. The Financial Institutions Division of the Regulation and Licensing Department must promote effective communication to gain meaningful input from Indian nations, tribes and pueblos in developing the recommendation.
>
> HB172 addresses the concern of the high interest rate of 175 percent currently under New Mexico law. HB172 has a tiered approach in capping the maximum interest rate of small loans at 36 percent for loans greater than $1,100, and at 99 percent for loans at $1,100 and less. The enactment of HB172 lowers the high interest allowed by small lenders on small loans and begins to address the concerns of predatory lending.
>
> Small lenders are located near tribal communities. Small lenders within the state 'outnumber McDonalds with 561 small lenders.' That is approximately one small lender for every 4,000 people. Nearly 60 percent of all small lenders are located within 15 miles of tribal boundaries. This demonstrates that small lenders are making obvious attempts to target native people, working families, and young native people. In McKinley County, there is a population of 71,367 people. In 2020, McKinley County generated 69,618 loans which is almost a 1:1 person to loan ratio. The small lenders usually lend at the highest allowable interest rate. More than 50 percent of their generated loans have an interest rate between 100 percent to 175 percent.[1]

The NAVA Education Project provides an example of the amount a borrower would pay on a $1,000 loan for over a year: $1,000 times 175 percent or $1,750 equals $2,750. The customer will repay nearly triple the loan amount.[2]

ECECD states:

> [s]ince a significant number of short-term loans are for less than $1,100.0, the maximum rate of 99 percent may not be affordable and could continue to trap the most vulnerable families in a cycle of needing to extend loans due to the inability to repay at such a high interest rate. According to the Financial Institutions Division 2020 Small Loan Annual Report, only 14 percent of installment loans were repaid in full without refinancing. ECECD is committed to helping working families manage their financial obligations through increasing the amount of income a family can earn by increasing the number of hours parents are able to work. With increased income comes a decreased likelihood that families with young children will resort to a high interest loan because acute financial crises are less frequent in families with more stable incomes. ECECD works with providers to increase reimbursement rates. ECECD aids home providers by providing them with software and other tools to manage their small businesses. The availability of affordable high quality child care has a demonstrated effect on financial stability for families.

---

[1] *High Interest Lenders,* NAVA Education Project.
[2] *High Interest Lenders*, NAVA Education Project.

> Of particular concern is the effect high-cost loans have on households with young children. Families with young children often have the least assets and income they will have at any other time in their life. ECECD is committed to reducing the stresses families with young children feel due to the new need for child care when an infant is born. The increased income realized by parents who are able to work more hours due to child care subsidies is strongly linked to better outcomes for children….
>
> As well as many of the families served by child care subsidies, the savings in interest and fees contained in HB172 would also benefit low-wage child care workers. Nationally, child care workers are paid an average of $12.34 and only $10.26 per hour in New Mexico, and PreK teachers make only marginally more. Bureau of Labor Statistics 'Occupational Employment Statistics", May 2020' available at: https://www.bls.gov/oes/current/oes_nm.htm.
>
> It is low wage workers who are more likely to enter into these high interest loans.

PERFORMANCE IMPLICATIONS

RLD/FID states: "[t]his will also have an indeterminate effect on two of the FID's performance measurements: (1) Licensing turnaround time; and, (2) percentage of examinations completed [as well as administrative implications]."

HB172 may hurt the business of small loan companies falling within its regulation.

ADMINISTRATIVE IMPLICATIONS

RLD/FID reports "[i]f there is a substantial increase in the number of small loan licensees due to the increase in maximum loan amount, the FID may need additional appropriation authority to increase the number of licensing staff and examiners to effectively regulate and supervise the small loan industry."

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB172 is related to SB107, SB129, HB78, and HB132.

TECHNICAL ISSUES

RLD/FID states:

> [a]t present, in regard to the SLA and the BILA, the FID only regulates loan activity for loans of $5,000 or less. However, HB172 appears to place restrictions on all lending not originated by federally insured depository institutions, which exceeds the current limitation of the SLA and the BILA. For one example, as worded HB172 would also apply its interest rate and APR caps to loans made between private individuals or corporations, including loans of more than $5.000.
>
> HB 172 has an effective date of October 1, 2022. Currently, licensees under the SLA/BILA are required to report their small loan activity for the prior calendar year by April 15. This discrepancy would create two data sets for year 2022, which could be

difficult for licensees in terms of reporting and would likely result in error-prone data reported to the FID.

HB 172 introduces a tier pricing system for loans up to $1,100 and for loans above such amount. HB 172 does not modify reporting requirements pertaining to the noted tiers. HB 172 does not specify who is in charge of regulating, or how licensees will modify the allowed interest rate on contracts when the prime lending rate exceeds 10 percent. Some related bills task the FID with posting a notice on its website within 10 days of the date any increase or decrease in the maximum allowable permitted APR is effective. In such bills, the price increases and decreases are triggered when the prime loan rate increases or decreases during "three consecutive months". However, interest rate movements of any leading interest rate may not occur in such consecutive intervals but may still take place over time. Moreover, the prime loan rate may or may not adequately reflect the financial cost incurred by licensees for the pricing of credit.

The expanded APR calculation and disclosure changes for both BILA and SLA, as proposed in this bill, would create a conflict of law between the BILA/SLA and federal law, 12 CFR Part 1026 – Truth in Lending (Regulation Z), concerning the definition and required disclosure of the APR, by requiring inclusion and disclosure of certain fees in the BILA/SLA version of the APR that are not included in the federal Regulation Z APR calculation. To avoid this conflict, RLD suggests either: (1) Simplifying the calculation of APR in HB 172 to exactly reflect the Regulation Z requirements; or (2) require both the current Regulation Z APR disclosure and a second calculation titled something other than "APR" to demonstrate the total annual percentage cost of financing, including other products and/or fees not covered under Regulation Z. Regulation Z provides that charges incident to the extension of credit are included in the calculation, dependent upon certain criteria.

ALTERNATIVES

RLD/FID reports: "FID recommends choosing a January 1, 2023, start date regarding changes in annual reporting requirements. This change will allow for a homogenous data set for each year. Because the calculation of APR in HB172 conflicts with Regulation Z, FID recommends either (1) simplifying the calculation to exactly reflect the Regulation Z requirements or (2) requiring both the current Regulation Z APR disclosure and a second calculation titled other than 'APR' to demonstrate the total annual percentage cost of financing, including other products and/or fees not covered under Regulation Z."

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

RLD/FID reports: "[l]icensing requirements in New Mexico will continue to apply to any non-depository entity who makes consumer loans or refinances of up to $5,000 with a maximum APR of 175 percent. Loan products made under the SLA or BILA would continue to be in the form of either a refund anticipation loan or an installment loan with a term of at least 120 days, repayable in at least four substantially equal payments, with no maximum loan term."

The current cap of 175 interest will remain in place to the potential detriment of New Mexico consumers including: Native Americans; low-income parents and citizens; childcare workers; and others.

JT/acv