

<b>LFC Requester:</b>	<b>Kludt, Kelly</b>
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**AGENCY BILL ANALYSIS  
2014 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**LFC@NMLEGIS.GOV**

*And*

**DFA@STATE.NM.US**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

**Original**      X   **Amendment**            
**Correction**           **Substitute**          

**Date** January 31, 2014  
**Bill No:** HB199-305 Jan 31

**Sponsor:** Rep. Yvette Herrell  
**Short**        Title Loan Product Maximum  
**Title:**        Interest Rate

**Reviewing**        Attorney General's Office  
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**SECTION II: FISCAL IMPACT \*\*\*\*FOR LFC OFFICIAL PURPOSES\*\*\*\***  
**AGO STAFF SHOULD LEAVE SHADED AREAS BLANK**

**APPROPRIATION (dollars in thousands)**

<b>Appropriation</b>		<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>FY14</b>	<b>FY15</b>		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

**REVENUE (dollars in thousands)**

<b>Estimated Revenue</b>			<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>FY14</b>	<b>FY15</b>	<b>FY16</b>		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

**SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s, committee’s or legislator’s request.

**BILL SUMMARY**

Summary Synopsis:

HB 199 would create a new statute that caps the interest rate on consumer title loan products at 25% percent per year. HB 199 pertains only to title loan products, which it defines as a loan transaction secured by a vehicle, and excludes from coverage purchase financing and installment loans. HB 199 defines installment loans, for purposes of the Act, as a loan paid in at least twelve substantially equal payments with a period of at least one year. This definition conflicts with the definition of “installment loan” contained in the New Mexico Small Loan Act.

**FISCAL IMPLICATIONS WITH ENACTING THIS BILL**

**SIGNIFICANT LEGAL ISSUES**

Car title loans carry high interest rates and fees, and the loans are deeply over-securitized. The New Mexico Financial Institutions Division reports that car title loan products carry, on average, APRs between 270% and 314%. In most instances, title loans do not require a credit check or other ability to repay analysis, and consumers only need to provide minimum income verification to receive the loan. Lenders are able to omit an underwriting process because the value of the collateral, the consumer’s car, greatly exceeds the amount of the loan and lender’s expenses. Despite being fully collateralized, tile loans in New Mexico carry extremely high interest rates, according to the Financial Institutions Division, up to an APR of 652%. Because of the high interest rates, fees, minimum underwriting requirements, and the ability of the lenders to repeatedly roll over the loans month after month, consumers are placed at an increased risk of suffering financial hardship or falling prey to a hopeless cycle of debt.

As written, HB 199 attempts to limit the interest charged on loans issued by title lenders, but its ambiguities and exemptions will allow the continuation of many of the potentially harmful practices that exist in the industry. The Bill fails to regulate the fees that a lender can charge related to a title loan. Across the small loan industry lenders use fees to evade caps on interest rates, effectively burdening consumers with onerous lending costs that do not take the form of interest. The Bill does not prohibit the rolling-over of the original loan or subsequent roll-over title loans that could result in additional fees being charged and an increase in the debt burden on consumers who are unable to make any headway on the loan principal. By permitting the rolling-

over of title loans, lenders are permitted to exasperate the consumer's already difficult financial situation.

In New Mexico, lenders offer both 30 day car title loans and 12-18 month installment title loans. The exemption of installment loans, defined in HB 199 as a loan with twelve successive substantially equal payments to pay off the loan with a period of at least one year, will allow the title lending industry to circumvent all of the protections of the Bill if enacted. Already many of the title loans issued in New Mexico have a term of at least one year and 12 or more payments, and would therefore be outside of the scope of this bill. The Financial Institutions Division reports that in 2012, title lenders issued nearly 10,000 installment title loans in New Mexico.

Title lenders, which already roll-over short term loans multiple times, could simply structure loans for longer durations, effectively writing the practice of rolling loans over into the face of the agreement. Exempting installment loans would leave much of the present and future title lending industry unaffected.

HB 199 has a narrow focus, short duration title lending, and the exclusion of coverage of other types of small loan lending fails to address the problems that exist across the industry and leaves open an opportunity for lenders to simply shift their title loan business to other practices. After the passage of the Payday Loan Act in New Mexico, small loan lenders simply changed features of their credit products, lengthening the loan terms, dropping the post-dated check requirement, etc., and continued their previous practices. The end result is that New Mexico is no less inundated with high cost credit products than it was prior to the passage of the narrow Payday Lending Act. As title lending is generally more harmful than payday lending, these concerns need to be addressed. Bills aimed at the small loan industry must be comprehensive in order to have an impact even on the segment of the business they aim to change.

#### **PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL**

HB 199 does not provide any mechanism for enforcing the Act. HB 199 states that it does not affect or limit any other provision of law pertaining to financial transactions. Thus there is ambiguity as to whether the Act supplements or adds to the authority, licensing or otherwise, of the Financial Institutions Division or any other state department or authority. Likewise, the Bill does not provide a private right of action or a means for public enforcement of the Act.

HB 199 does not define or limit the scope of "title lender." This ambiguity makes it unclear whether out-of-state entities will be covered by the Act. The Bill should be clarified so that it clearly applies to any entity which offers title loans to New Mexico residents.

#### **ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL**

N/A

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION**

N/A

#### **TECHNICAL ISSUES OR DRAFTING ERROR**

Section 1(A)(1) of the Bill setting the maximum interest rate at 25% is unclear and ambiguous as to whether the term “interest” includes any fees charged to the consumer as an incident to the extension of credit.

Section 1(C)(4) of the Bill defining title loan products is unclear and ambiguous as to whether title loans are transactions secured by vehicles or title to a vehicle. This ambiguity may lead to nearly 100% of title loans falling outside the coverage of the Act, as title loans as presently offered in New Mexico are liens on the title of the car and not possessory liens on the cars themselves.

## **OTHER SUBSTANTIVE LEGAL ISSUES**

N/A

## **ALTERNATIVES TO ENACTING THIS BILL**

Enacting comprehensive title lending or small loan lending legislation

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo

## **AMENDMENTS NEEDED TO IMPROVE THIS BILL**

Statutorily set minimum underwriting guidelines to include evaluation criteria to determine the consumer’s ability to repay the loan.

Prohibit the rolling-over of title loans.

Require title loans to have repayment periods in excess of 30 days.

Ensure that fees incidental to the extension of the title loan are included in the calculation of the “interest rate.”

Include all title lending, regardless of length of loan or number of installment, within the protections offered by the Bill.

Integration of the Bill into existing small loan regulations to ensure agency and licensing oversight, private and public rights of action, and to ensure that a larger percentage of high-cost lending is prevented through legislation.