

New Mexico Proposes Bill Requiring Certain Creditors to Report to Big Three Consumer Reporting Agencies

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On January 12, 2017, a bill was introduced into the New Mexico legislature (House Bill 100) that would amend the Small Loan Act and the Motor Vehicle Sales Finance Act to *require* Small Loan Act licensees and holders of retail installment sale contracts to report to a "nationwide consumer reporting agency positive credit of the consumer" related to payday loans (a subset of loans regulated by the Small Loan Act) and motor vehicle RISCs.

The bill defines "nationwide consumer reporting agency" as the following:

Any person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's creditworthiness, credit standing or credit capacity, each of the following regarding *consumers residing nationwide*: (1) public record information; or (2) credit account information from persons who furnish that information regularly and in the ordinary course of business.

Although the definition of "nationwide consumer reporting agency" is similar to the one in the Fair Credit Reporting Act, it differs in that it includes those consumer reporting agencies that report only on credit account information (and do not have public record information). The bill's definition may include not only the three credit bureaus (Experian, TransUnion, and Equifax), but also specialty CRAs that report on short-term lending transactions.

Under the proposed bill, "positive credit" means financial records "solely relating to the existence of the consumer's payday loan and timely performance of the consumer in making payments on a payday loan" or RISC. This proposed requirement to report "solely" positive information appears to be in tension with the FCRA, which requires that if a creditor furnishes information about a consumer, it must do so accurately. A creditor cannot furnish *only* positive information to a CRA, while omitting negative information on the same account. Because it is unclear whether, under the proposed bill, a creditor could report only on accounts in a positive status, a creditor reporting on an account would have to take on the full compliance responsibility of reporting both positive and negative information.

Representative Javier Martinez (D) introduced the bill. It is currently in the House Consumer and Public Affairs Committee and has been referred to the House Business and Industry Committee.

[HB 100](#)

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