

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

January 27, 2017 |

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

Hudson Cook, LLP provides articles, webinars and other content on its website from time to time provided both by attorneys with Hudson Cook, LLP, and by other outside authors, for information purposes only. Hudson Cook, LLP does not warrant the accuracy or completeness of the content, and has no duty to correct or update information contained on its website. The views and opinions contained in the content provided on the Hudson Cook, LLP website do not constitute the views and opinion of the firm. Such content does not constitute legal advice from such authors or from Hudson Cook, LLP. For legal advice on a matter, one should seek the advice of counsel.

SUBSCRIBE TO INSIGHTS

HUDSON COOK

Hudson Cook, LLP is a national law firm representing the financial services industry in compliance, privacy, litigation, regulatory and enforcement matters.

7037 Ridge Road, Suite 300, Hanover, Maryland 21076
410.684.3200

hudsoncook.com

© Hudson Cook, LLP. All rights reserved. Privacy Policy | Legal Notice
Attorney Advertising: Prior Results Do Not Guarantee a Similar Outcome

