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

SPONSOR: Garcia, M.P. DATE TYPED: 03/01/01 HB 870

SHORT TITLE: Payday Loan Act SB

ANALYST: Valdes

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
			$ 447.2	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Relates to Appropriation in The General Appropriation Act ______________________________

SOURCES OF INFORMATION

Financial Institutions Division, Regulation and Licensing Department

SUMMARY

Synopsis of Bill

House Bill 870 defines the business practice for payday loan companies. It sets a minimum loan amount of $50.00 and a maximum loan amount of $300.00. Requires the companies to accept partial loan payments of $5.00 or more. Limits renewals to a maximum of two, and requires the payday loan company not to engage in another loan with the same consumer once paid off for a period of thirty days. Requires the payday loan company to inquire about other payday loans the consumer may have, as the maximum combined amount is $300.00. There is an administrative fee limit per loan of $5.00 and a limit on insufficient funds fee not to exceed $15.00 or the lesser of the fee imposed upon the licensee by the financial institution. A consumer may file a class action suit to enforce the Payday Loan Act, and mandatory arbitration clause is not permitted. The payday loan companies will be required to have additional disclosures, and new reporting requirements for renewals.

Significant Issues

The Financial Institutions Division provided the following information on House Bill 870:

- Page 2 lines 13 through 18, the definition of other consideration is broad. For example, a person accepts a check from a friend to purchase cosmetics, and then agrees not to deposit the check until the next Friday. Under the definition, all small business operators, or individuals who sell to friends and family will be required to be licensed under the Payday Loan Act.

- Under provisions of the bill, any retail seller who's only practice is to cash checks for a fee greater than $2.00 will now need to be licensed under the Payday Loan Act.

- The bill requires that any state or federally regulated financial institution, regardless of jurisdiction, that makes payday loans to follow all provisions of the act except licensing.

- The bill requires payday loan companies to compile and report annually, statistics concerning all payday loans granted for the year. The information required will take five (5) State Of New Mexico Examiners a substantial amount of time to verify as all loans on the books must be reviewed. Additionally, the information required in the annual reports to the Division is voluminous and burdensome. The information required far exceeds the information required of other small loan licensees.

- The bill requires the Director to review and approve any allocation of expenses when the payday loan company is conducting another business. This will require analysis of revenues and costs requiring professional accounting and sophisticated cost accounting techniques.

- The bill requires the payday loan companies to file a copy of the loan contract and fee schedules with the Director. The copies must then be available for interested parties and the general public.

- The bill requires a payday loan for $300.00 to have a minimum repayment period of twelve weeks. Most payday loans now made exceed $100.00, so repayment would have to be extended for four to six weeks. This would result in higher costs to the consumer.

- The bill allows the consumer to make partial payments in an amount of $5.00 or more. It does not address how the partial payment is to be applied to the loan.

- The bill limits a payday loan to a maximum of $300.00.

- Under provisions of the bill, the Director must approve a consumer informational pamphlet written in English and Spanish.

- The bill requires the Director to approve all contracts including the contracts written in other languages requiring legal expertise. These new disclosures would be required in addition to those of the Federal Truth in Lending Act, which are already provided, and would create new legal liability, and invite lawsuits.

- The bill requires the Director to approve all notices to be posted by licensee in English, Spanish, or any other languages.

- Page 11 lines 6 through 9, is not valid for the simple interest method. Under the simple interest method, there is no precomputation of interest.

- Page 11 line 25 through page12 line 4, the standard would be challenging to apply to a consumer whose wage is earned by commission or an hourly worker whose workweek can fluctuate.

- Licensees must rely on the consumer being completely truthful. Payday loans are generally not reported to any credit bureaus; therefore, the only source of information is the consumer. Incomplete or inaccurate communication could lead to disputes and potential litigation.

- Page 12 line 25 through page 13 line 11, the standard would be challenging to apply for a consumer since the bill limits renewals to a maximum of two, and requires the payday loan company not to engage in another loan with the same consumer once paid off for a period of thirty days. The enforceability of the renewal limitation is difficult because the consumer could deposit loan proceeds from another lender into his/her bank, and then write personal checks to cover existing outstanding payday loans.

PERFORMANCE IMPLICATIONS

Implementation and enforcement of the bill would require annual and complete examinations of a minimum of 150 to 200 licensees and state or federally regulated institutions that do payday loans, which cannot currently be accomplished with the Division's appropriated budget. The performance of the agency and the unit that supervises the consumer financial industry would be seriously impeded.

This bill, depending on the number of new licensees, may affect the Financial Institutions Division's performance output measure on application processing, which designates that 80% of the applications be processed within a standard number of days. It may also affect an efficiency measure: the average number of days to resolve a Financial Institutions Division complaint. An increased number of licensees with no increase in the number of staff could result in the resolution of complaints taking longer.

FISCAL IMPLICATIONS

There is no appropriation contained in the bill. According to the Financial Institutions Division, there is anticipated increased cost to the agency. The bill would require 8 FTEs (an industry supervisor, legal counsel, 5 examiners, and clerk specialist), vehicle costs, per diem, travel costs, office space, filing cabinets and a toll free number to enforce the provisions of the new laws, and also mediate complaints, conduct investigations, conduct administrative proceedings, and enforce penalties. The Financial Institutions Division would not be able to absorb the additional costs within its present budget.

There will be no new revenue for the agency. The estimated additional cost to the agency as described in Fiscal Implications will be $447,200.00.

ADMINISTRATIVE IMPLICATIONS

The Financial Institutions Division would be inundated with the review and approval of payday contracts and notices required by the law, and the additional review of financial information for licensure of payday lenders.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

The bill is duplicative with the Small Loan Act of 1955, Chapter 58, Article 15 NMSA 1978 in that bill, if passed, will require dual licensure pursuant to both acts.

TECHNICAL ISSUES

Page 9 lines 14 though 18 conflicts with page 6 lines 12 through 14, the disclosure requirement for the term of a payday loan is not consistent with Page 6, lines 12 through 14 where the requirement of a minimum term of no less than two weeks for each $50.00 owed on the loan.

The bill needs a grandfather clause to address payday loans that will be in existence at the time the law becomes effective.

Page 5 line 14, and page 9 lines 12 and 13, and page 11 line 14, criminal process is not defined.

OTHER SUBSTANTIVE ISSUES

The Division has not received any complaints on payday lenders during the past year. It is clear that the net effect of the new policies, financial disclosures, limitations, and new consumer disclosures, required will place an expanded regulatory burden upon payday lenders and the Division with no clear benefit to the consumer. The result will be a substantial reduction in payday lenders and loans available in New Mexico.

MV/sb