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

SPONSOR Tsosie **DATE TYPED** 02/15/05 **HB**

SHORT TITLE Consumer Loan Act **SB** 787

ANALYST McSherry

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
NFI	$182.5	$182.5	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to and conflicts with: SB200, Consumer Loan Act, and HB372, Consumer Loan Act. Relates to: HB65, Payday Loan Regulation, and SB674, Regulation of Payday Loans.

SOURCES OF INFORMATION

LFC Files
Administrative Office of the Courts
Regulations and Licensing
Economic Development Department

SUMMARY

Synopsis of Bill

Senate Bill 787 proposes to establish the "Consumer Loan Act" which would affect consumer lenders currently licensed under the New Mexico Small Loan Act of 1955. The proposed Act would require annual licenses for those entities providing consumer loans. Licensing would be the responsibility of the Financial Institutions Division of the Regulation and Licensing Department. The Department would have the duties to issue, revoke and suspend licenses. The division would be required to maintain a list of licenses, establish a complaint process for consumers, and compile annual reports of consumer lending in New Mexico

The Act proposes to limit the rate of interest that a licensee may charge to a maximum of forty percent a year (40%).

Definitions are proposed in the Act, including: "consumer," "consumer lender," "consumer loan," and "licensee." The Act would exclude from the definition of "licensee": state or federally chartered banks, thrift associations, savings and loan associations, credit unions, pawnbrokers, mortgage companies, mortgage brokers, motor vehicle sales finance companies, credit card companies or consumer lenders operating under the NM Bank Installment Loan Act of 1959 making a loan repayable in substantially equal installments of principal and interest for a period of no less than 120 days to maturity, unless the loan is secured by a check, tax refund or motor vehicle title).

The bill proposes that a person making consumer loans, acting as a facilitator of consumer loans or assisting a consumer lender in the origination of consumer loans, must obtain a license from the Regulation and Licensing Department, good for a term of one year. Application fees, renewal fees and fees based on the monetary amount of loan made would have to be assessed. The proposed Act provides that by accepting the license, the applicant would agree not to use the criminal process to collect the payment of consumer loans.

The bill further proposes that:

> a violation of the Act could result in license suspension, revocation or non-renewal, the occurrence of which would not relieve a licensee from civil or criminal liability. An alleged violator would be entitled to notice and a hearing or the opportunity for a hearing.
>
> a consumer may make partial payment on the balance of a loan at any time without charge other than interest, and that a licensee must give a consumer a signed, dated receipt showing amount paid and principal balance due, after each payment made by the consumer.
>
> a licensee would have to deliver to a consumer before entering into a consumer loan a contract that contains specified information, including an itemization of fees and interest charges to be paid by the consumer, a clear description of the consumer's payment obligations pursuant to the contract, and a specifically conspicuous statement that "You cannot be prosecuted in criminal court to collect this loan."
>
> a licensee would have to post within each place of business a notice in English and Spanish informing consumers that it is illegal for the licensee to use the criminal process against a consumer to collect on a loan, and displaying the schedule of all interest and fees to be charged on a consumer loan.
>
> a licensee could charge no more than 36% annual interest on the amount of cash delivered to the consumer in a consumer loan.
>
> when a loan is repaid before its due date, unearned interest charges would be rebated to the consumer.
>
> under a violation under the Act, except as the result of accidental or bona fide error of computation, renders the loan void, the licensee would have no right to collect, receive or retain any principal interest or other charges with respect to the loan.
>
> a person who violates the Act would be liable for actual, consequential and punitive damages plus statutory damages of $1,000 for each violation, plus costs and attorney fees. Also provides for injunctive and other equitable relief.

a class action suit would be a mechanism to enforce the Act.

a knowing violator would be guilty of a petty misdemeanor.

The effective date of the Consumer Loan Act would be July 1, 2005.

Significant Issues
The Act provides for revenue from licensing fees which could offset the costs of Act administration.

According to the Economic Development Department (EDD), there is a conflict in the wording regarding “motor vehicle title” (Page 2 lines 18 through 23). The department cites that it appears that consumer lenders making loans under the New Mexico Bank Installment Loan Act of 1959 that make motor vehicle loans may still be required to license under the Consumer Loan Act. Installment lenders would secure their motor vehicle loans by taking a security interest in the motor vehicle title.

EDD asserts that is it is not clear (page 6 lines 18, 19 and page 7 lines 13 through 25 and page 8 lines 1) whether a licensee could contract for and receive additional fees such as administrative fees, filing fees, etc. The Department points out that Page 6 states that an itemization of fees is a requirement of the contract yet there are no permitted fees listed in Section 8 of the Act.

EDD further cites page 9 lines 19 through 21 which prohibits the licensee from selling any kind of insurance as significant.

The AOC asserts that the Act does not provide for an appeal, or reference any existing appeal process, to be employed by a licensee whose license has been suspended, revoked, or not renewed.

PERFORMANCE IMPLICATIONS

The Financial Institutions Division would be responsible for licensing and enforcement of the proposed Act, which could have performance implications.

FISCAL IMPLICATIONS

Whether the proposed fees are sufficient to offset the cost of program administration is undetermined.

In order to make a prediction of the fiscal impact, the department uses the assumption that some lenders would choose to become licensed only under the Consumer Loan Act and would thus decrease the revenue from the Small Loan Act. The Consumer Loan Act would have a \$1,000.00 licensing fee for original license; the Small loan Act has a \$1,000.00 investigation fee plus a \$500.00 licensing fee which would result in a net decrease of revenue of \$500.00 for new lenders that license only under the Consumer Loan Act. The Consumer Loan Act would have a \$1,000.00 renewal fee; the Small Loan Act has a \$500.00 renewal fee resulting in a net revenue gain of \$500.00 per renewal. It is assumed that all current small loan licensees would continue to be licensed under either the Consumer Loan Act or the Small Loan Act. It is assumed that the net difference would be equal to a revenue decrease of $500.00 for each new lender application and a net increase in revenue for each renewal or conversion from a Small Loan License to the Consumer Loan Act license. This is based on the further assumption that a lender that currently holds a small loan license would decide to only license under the Consumer Loan Act and the lender would have to pay a $1,000.00 original license fee versus $500.00 to renew the small loan license.

RLD predicts that the proposed Act could generate additional revenue for FY06.

Revenue estimate is based on the assumptions above.

Estimated that 400 companies will license under the Act	$200,000.00
New Consumer Loan Companies estimated at 35	$ (17,500.00)
Total	$182,500.00

ADMINISTRATIVE IMPLICATIONS

Licensing and monitoring compliance of the proposed restrictions would be the responsibility of the Financial Institutions Division of the Regulation and Licensing Department.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB200, Consumer Loan Act, and HB372, Consumer Loan Act, each propose restrictions on the rates imposed by small loan licensees; however the restrictions proposed are not equivalent to those in this bill.

HB65, Payday Loan Regulation, and SB674, Regulation of Payday Loans, each propose to limit licensees offering payday loans.

TECHNICAL ISSUES

Clarification may be needed regarding the term, “motor vehicle title.”

OTHER SUBSTANTIVE ISSUES

According to RLD, it is impossible to predict what effect the 40% rate limitation will have on the current Small Loan licensees.

ALTERNATIVES

AOC suggests providing for an appeal process or reference to an existing appeal process for licensees whose license has been suspended, revoked or not renewed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Consumer loans would remain readily available to consumers with no additional disclosures or restrictions imposed by this Act.

Consumers would not benefit from the additional consumer protections regarding consumer loans as provided for by the proposed Act.

Another Consumer Loan Act proposal could be enacted.

EM/njw