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FISCAL IMPACT REPORT

SPONSOR Stewart DATE TYPED 02/10/05 HB 372

SHORT TITLE Consumer Loan Act SB _____

ANALYST McSherry

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
NFI	\$282.5	\$282.5	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

Duplicates SB 200 Consumer Loan Act;
Relates to HB 65, Payday Loans

SOURCES OF INFORMATION

LFC Files
Regulations and Licensing

SUMMARY

Synopsis of Bill

House Bill 372 proposes the creation of the Consumer Loan Act (Act). The Act proposes licensing requirements for any person making consumer loans who is not exempted by the Act. The proposed Act contains provisions to which the licensee must adhere. The Act limits the rate of interest that a licensee may charge to a maximum of thirty-six percent a year (36%).

Defined terms used within the Act, include: “consumer,” “consumer lender,” “consumer loan,” and “licensee” (excludes state or federally chartered bank, thrift association, savings and loan association, credit union, pawnbroker, mortgage company, mortgage broker, motor vehicle sales finance company or credit card company).

Language proposed provides that a person making consumer loans, acting as a facilitator of consumer loans or assisting a consumer lender in the origination of consumer loans would have to 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 the loan made would 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.

Proposed language provides 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.

The bill provides that a consumer would be able to make partial payment on the balance of a loan at any time without charge other than interest, and that a licensee would have to give a consumer a signed, dated receipt showing amount paid and principal balance due, after each payment made by the consumer.

Proposed language states that 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." Additionally, 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 would have to display the schedule of all interest and fees to be charged on a consumer loan.

The bill provides that a licensee could charge no more than 36% annual interest on the amount of cash delivered to the consumer in a consumer loan. The section also provides that when a loan is repaid before its due date, unearned interest charges would be rebated to the consumer.

The proposal provides that a violation under the Act, except as the result of accidental or bona fide error of computation, renders the loan void, and the licensee has no right to collect, receive or retain any principal interest or other charges with respect to the loan. The section further provides that a person who violates the Act shall be liable for actual, consequential and punitive damages plus statutory damages of \$1,000 for each violation, plus costs and attorney fees. The section also provides for injunctive and other equitable relief, and also provides for a class action suit to enforce the Act.

Proposed language states that a knowing violator of the proposed Act is guilty of a petty misdemeanor.

Significant Issues

The Administrative Office of the Courts (AOC) states that it is not clear whether a licensee would be able to contract for and receive additional fees such as administrative fees, filing fees, etc. under the proposal: an itemization of fees would be a requirement of the contract yet there are no permitted fees listed in Section 8 of the Act.

AOC asserts that it appears to require consumer lenders who want to make loans under the New Mexico Bank Installment Loan Act of 1959 to be dual licensed under the Consumer Loan Act and the New Mexico Small Loan Act of 1955. It does not clearly define whether loans made under the Bank Installment Loan Act of 1955 are restricted to the thirty-six percent a year (36%) rate maximum.

PERFORMANCE IMPLICATIONS

The Economic Development Department states that this bill could cause the establishment of stronger regulations for violation of the Consumer Loan Act to insure proper business practices are in place. The Department asserts that all loan contracts with consumers/lenders should be in English/ Spanish

FISCAL IMPLICATIONS

The Regulations and Licensing Department states that there is no historical data upon which to base fiscal impact, however the assumption used by the Department is that some lenders will choose to become licensed only under the Consumer Loan Act and thus decrease the revenue from the Small Loan Act.

RLD used the following assumptions to determine a projected fiscal impact: The Consumer Loan Act has 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 resulting in a net decrease of revenue of \$500.00 for new lenders that license only under the Consumer Loan Act. If the intent of the Act is to require dual licensing for lenders that want to make loans under the Bank Installment Loan Act then there will be an increase in revenue. The Consumer Loan Act has 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 will continue to be licensed under either the Consumer Loan Act or the Small Loan Act. It is assumed that the net difference will 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 decides to only license under the Consumer Loan Act the lender would have to pay a \$1,000.00 original license fee versus the \$500.00 to renew the small loan license.

The Act may generate additional revenue for FY06; however there is no historic data to make this prediction.

Revenue estimate is based on the assumptions proposed by RLD, listed above.

Estimated that 600 companies will license under the Act	\$300,000.00
New Consumer Loan Companies estimated at 35	<u>\$ (17,500.00)</u>
Total	\$282,500.00

ADMINISTRATIVE IMPLICATIONS

The Financial Institutions Division of the Regulations and Licensing Department would gain additional duties.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to House Bill 65, Payday Loan Registration
Duplicates SB 200, Consumer Loan Act

TECHNICAL ISSUES

RLD asserts that clarification is needed regarding dual licensing and regarding whether Small Loan licensee making loans under the New Mexico Bank Installment Act is limited to 36%.

OTHER SUBSTANTIVE ISSUES

RLD predicts that the proposed Act would provide for additional consumer protection, but that it is impossible to predict what effect the 36% rate limitation will have on the current Small Loan licensees.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

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

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

EM/sb