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

SPONSOR HJC
ORIGINAL DATE 2/21/07
LAST UPDATED 3/16/07
HB CS/92/aSJC/aSFL

SHORT TITLE Payday Loan Regulation
SB

ANALYST C. Sanchez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
(Indeterminate)	(Indeterminate)	(Indeterminate)	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	NFI	See section on fiscal implications.	See section on fiscal implications.			General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Regulation and Licensing Department (RLD)
Attorney General's Office (AGO)

SUMMARY

Synopsis of SFL Amendment

The amendment to the House Floor Substitute bill for HB92 amends Article 7 of the Records, Legal Notices and Oaths Act., specifically, § 14-7-1 *et seq.* Article 7 pertains to records maintained by financial institutions, to include banks, savings and loan associations as well as small loan companies.

Consistent with the exception created by paragraph (B) of § 14-7-1 that no notice is required for requests for records made by a state agency pursuant to its statutory directive, this amendment extends this no notice exception to compliance monitoring requests or preparation of reports made by a state agency pursuant to the agency's statutory directive(s).

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment removed subsection D and other language on page 38 to make the free 130 day payment plan automatic by allowing borrowers to finance administrative fees at the time they obtain a payday loan. The bill originally prevented borrowers from entering a 130 day payment plan until they paid off all administrative fees ($15.50 per $100 borrowed and $0.50 per transaction verification database fee). Requiring automatic 130 day payment plans was an element of the compromise agreement reached by Rep. Lundstrom, Sen. B. Sanchez and the Administration.
This SJC amendment restored the letter of that compromise element to the bill.

The second SJC amendment clarified language on page 42 to require that the verification database "provides sufficient information" to a lender in order to qualify a borrower. Since all consumer information in the database is strictly confidential (see p. 42), payday lenders have made loans to people who are unlikely to repay them. This amendment will likely ensure that, at a minimum, the database provides lenders with information such as the number of times a consumer has not repaid a loan on time, the number of times a consumer has entered a payment plan and defaulted on payment plans.

Synopsis of Original Bill

The House Floor substitute for HB 92, regulates payday loans by adding to the Small Loan Act such things as limiting charges, providing for repayment plans, prohibiting loan renewals, authorizes the Director of the Financial Institutions Division to promulgate rules, and provides for a database for lenders to comply with the Act's requirements when lending to prospective borrowers.

Summary of proposed new statutory provisions:

- The definition of installment loan is a loan that is to be repaid in a minimum of four successive substantially equal payment amounts to pay off a loan in its entirety with a period of no less than one hundred twenty days to maturity. It does not mean a loan in which a licensee requires, as a condition of making the loan, the use of postdated checks or debit authorizations for repayment of that loan.
- The Director will have expanded rulemaking authority regarding costs, terms, disclosures, collection methods and verifying consumer eligibility for payday loans.
- Section 13 adds a new section to the Small Loan Act and contains general requirements for payday loans. Some of the requirements are that it restricts licensees from lending money to consumers if the total principal amount of the loan and fees, when combined with the principal amount and fees of all of the consumer's other outstanding payday loan products, exceeds twenty-five percent of the consumer's gross monthly income. This section also limits payday loans to a minimum of 14-days unless a shorter time is agreed to in writing by the consumer and a maximum maturity date not to exceed 35-days. This section also gives the consumer the right to rescind the contract within a fixed time period.
- Section 14 adds a new section to the Small Loan Act. A licensee may charge an administrative fee of not more than $15.50 per $100.00. The licensee may also

impose a fee of not more than $.50 to cover the cost of the verification system fee and charge a one time fee not to exceed $15.00 for insufficient funds to pay a check or debit authorization. A check or debit authorization cannot be presented more than one time unless the consumer agrees to in writing. A licensee may require prepayment of the administrative fee at the time a payday loan is entered into and such fee may be paid out of the proceeds of the payday loan.

- Section 15 adds a new section to the Small Loan Act and contains a list of general prohibitions for lenders regarding a payday loan transaction.
- Section 16 adds a new section to the Small Loan Act. At the time a consumer enters into a payday loan agreement, the licensee shall offer the consumer the opportunity to enter into an unsecured payment plan for any unpaid principal balance of the payday loan. During the term of a payday loan, the licensee may offer and the consumer may accept the opportunity to include the unpaid administrative fee within the unsecured payment plan. There are to be no additional charges for the repayment plan and its term is to be a minimum of 130-days of relatively equal installments based on the consumer's schedule of pay periods. A licensee failing to offer a consumer the opportunity to enter a payment plan shall not commence legal collection proceeding against a consumer if the loan has not been fully repaid.
- Section 17 adds a new section to the Small Loan Act. This section provides for a 10 calendar day waiting period after the consumer has completed all payment obligations pursuant to a payment plan before the consumer can obtain another payday loan.
- Section 18 adds a new section to the Small Loan Act. This section requires lenders to verify a prospective borrower's status on a commercial database to determine if he is eligible for a payday loan. This section requires the Director of the Financial Institutions Division to certify which databases are commercially reasonable.
- Section 19 adds a new section to the Small Loan Act. This section requires that certain disclosures be made immediately above the borrower's signature line on the payday loan agreement in at least 12 point type. This section also requires the licensees to post a sign conspicuously notifying the consumer of his right to enter into a payment plan.
- Section 20 adds a new section to the Small Loan Act. This section delineates the legislative reporting duties of the Division regarding statistics, data, demographics and compliance of all licensed small loan lenders annually. Additional reporting regarding licensed payday loan lenders is also required.
- The effective date of the provisions of this Act is November 1, 2007.

FISCAL IMPLICATIONS

According to the Regulation and Licensing Department the impact on revenue is indeterminate because it is impossible to estimate how many licensees would choose not to renew their license due to having to comply with the provisions of the bill. License renewal fee is $500.00 per license. Currently there are 667 licensed small loan companies.

There would be no budget impact for FY07. There may be additional budget impact beginning in FY08. The Financial Institutions Division may need to hire more examiners to monitor the licensees for compliance with the provisions of the bill.

Estimated cost per examiner:

Salary @ $31,000 + 30% benefits	$40,300
Office space @ 150 sq/ft @ $20 sq/ft	3,000
Per Diem @ $275 per week times 26 weeks	7,150
Car	6,000
Estimated cost per examiner	$56,450

SIGNIFICANT ISSUES

This bill presents the general issue of imposing statutory regulation on the payday loan industry. The lack of statutory and regulatory controls over this industry has created numerous abuses of vulnerable consumers.

Section 1 adds the following definitions to NMSA 58-15-2 of the Small Loan Act: "consumer," "debit authorization," "installment loan," "payday loan," "payday loan product," "renewed payday loan," and "simple interest."

Section 2 removes the requirement of pledging real estate when providing a loan in the amount of $2,500 while providing a line of credit above $2,500.
Section 6 eliminates the requirement of "[e]ach licensee having to display in each licensed place of business, in a place where it will be readily visible by borrowers, a full and accurate schedule of the rates of charges upon all classes of loans currently to be made by him, stated on a percent per annum basis and also on a percent per month basis."
Section 7 contains some grammatical changes and deletes the following: "For the purpose of computing charges, whether at the maximum rate or less, a month shall be any period of thirty consecutive days and the rate of charge for each day shall be one-thirtieth of the monthly rate."

Section 8 contains grammatical changes and also provides, at the option of the borrower, that a statement of the terms of the loan be provided in Spanish.

Section 11 increases monetary fines and the period of incarceration for violations of the Small Loan Act.

Section 12 adds a new section to the Small Loan Act and restricts lending money from those persons who already have a payday loan or payday loan product of 25% their gross monthly income. This section also limits payday loans from being a minimum of 14-days not to exceed 35-days. This section gives the borrower the right to rescind the contract within a fixed time period.

Section 14 adds a new section to the Small Loan Act and contains a list of general prohibitions for lenders surrounding a payday loan transaction.

Section 16 adds a new section to the Small Loan Act. After a borrower has entered into a renewed payday loan, if they still cannot repay, the lender must offer the borrower a repayment plan. There are to be no additional charges for the repayment plan and its term is to be 98-days of equal installments.

Section 17 adds a new section to the Small Loan Act. This section provides for a 7 day cooling-off period before a borrower can obtain another payday loan.

Section 18 adds a new section to the Small Loan Act. This section requires lenders to verify a prospective borrower's status on a commercial data base to determine if they are eligible for a payday loan. This section requires the Director of the Financial Institutions Division to certify which data bases are commercially reasonable.

Section 19 adds a new section to the Small Loan Act. This section requires that certain disclosures be made immediately above the borrower's signature line in at least 12 point type.

Section 20 adds a new section to the Small Loan Act. This section imposes additional duties on the Financial Institutions Division. Most notably, it requires the Division to provide an annual report to the legislature analyzing the payday loan industry.

Section 21 repeals NMSA 1978, § 58-15-15 of the Small Loan Act. This section of the Small Loan Act surrounds permissible pre-computed charges.

Section 24 is the effective date of the New Provisions. This section states November 1, 2007 is the effective date of the new provisions.

PERFORMANCE IMPLICATIONS

If more examiners are needed to monitor compliance with the bill, but funds are not appropriated, examiners currently on staff may need to also monitor compliance with this bill in addition to their current examination responsibilities. This could affect the Financial Institutions Division's performance measure of examination turnaround in 30 days.

ADMINISTRATIVE IMPLICATIONS

None noted for FY07. Starting in FY08 the Financial Institutions Division may need to hire more examiners to monitor for compliance with the bill. It is difficult to determine what effect the new provisions of the bill will have regarding the number of small loan licensees.

OTHER SUBSTANTIVE ISSUES

According to the Attorney General's Office, although this bill appears at first glance to only regulate payday loans, it does not. Section 2 (B) exempts certain loans from the Small Loan Act's requirements. This bill removes the limitation of real estate being used as collateral for loans in the amount of $2,500 or less with open lines of credit in excess of $2,500. In other states, the title loan industry has used this exemption to avoid small loan regulation. Without the limitation of real estate as collateral, there is nothing preventing the title loan industry from forming contracts that will exempt them from the Small Loan Act's requirements.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Payday loans would remain available to consumers with no additional disclosures, no caps on fees and charges, no maximum loan amount, or other restrictions imposed by this bill.

POSSIBLE QUESTIONS

Does this legislation help people avoid sinking into a cycle of debt from which they may not be able to escape?

Should payday lenders be required to consider whether borrowers actually can repay their loans?

CS/nt