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FISCAL IMPACT REPORT

ORIGINAL DATE 2/09/07

SPONSOR Park LAST UPDATED _____ HB 887

SHORT TITLE Title Loan Fees and Regulation SB _____

ANALYST C. Sanchez

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.	See section on fiscal implications.		General Fund

Relates to SB 393

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

Administrative Office Of The Courts (AOC)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 887 amends the Small Loan Act of 1955, 58-15-1 NMSA 1978. The amendment includes definitions for new terms and new sections that address the charges and fees that may be imposed when making title loans. The legislation also addresses licensure of title lenders, requirements for title loans, permitted charges, default and repossession and sale of property, prohibited acts, renewed title loans, payment plans, disclosures, and verification system.

Summary of Key Issues:

New definitions for:

- Consumer
- Debit authorization
- Fair market value
- Installment loan

- Loan property
- Payment plan
- Person
- Simple interest
- Title lender
- Title loan
- Title loan agreement

Summary of proposed new statutory provisions:

- 1) Any loan made on an unencumbered state-issued certificate of title or certificate of ownership to personal property, not including a mobile home, that is deposited with a title lender as a security for a title loan in the course of the title lender's business is subject to a title loan agreement unless the loan is an installment loan with interest not exceeding 36% annual percentage rate.
- 2) Requires any person acting as a title lender to be licensed.
- 3) Requires a title lender to post a consumer protection bond of \$25,000 per location.
- 4) The division may require criminal background checks for new licensees.
- 5) Requires a title loan to have a stated minimum term of at least thirty days, with the option of one renewal, with any remaining principal converted/lapsing into a fully amortized payment plan.
- 6) A title loan shall not exceed the lesser of fifty percent of the fair market value of the loan property or two thousand five hundred dollars.
- 7) A consumer may rescind a title loan transaction.
- 8) A title loan licensee may charge an administrative fee of not more than \$15.50 per \$100 dollars on new and renewed title loans.
- 9) Only one \$15.00 fee maybe charged for a returned check or debit authorization.
- 10) A title loan will be in default if within 7 days a consumer does not renew the title loan, the consumer does not elect to enter a payment plan or upon the consumer's third missed payment of a payment plan.
- 11) Upon default a consumer shall deliver the loan property to the lender. If the consumer fails to deliver the loan property with 3 days the lender may take possession of the property. Prior to the lender engaging a repossession agent, the lender shall afford the consumer an opportunity to make the loan property available to the lender. Upon taking possession of the loan property, the lender may dispose of the loan property through a sale by a licensed dealer. Within 30 days after the sale, the lender must return any excess to the consumer.
- 12) Adds a section regarding prohibited acts when licensees make title loans.
- 13) Consumers that have renewed their title loans are eligible to enter into a payment plan. The lender may not charge any fees or interest for a payment plan. The payment plan shall provide for: (1) a minimum of one hundred eighty days for the repayment of the unpaid principal balance of a renewed title loan; and (2) substantially equal monthly payments to pay off the title loan in its entirety.
- 14) The division must certify by no later than October 1, 2007 one or more consumer reporting services databases that a licensees must use in order to verify that a proposed loan agreement is permissible.

FISCAL IMPLICATIONS

None noted for FY07. In the future 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.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and actions commenced as a result of violations of this law. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

New definitions and statutory provisions as outlined above and some technical issues as outlined below.

PERFORMANCE IMPLICATIONS

This could affect the Financial Institutions Division's performance measure of examination turnaround in 30 days.

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

Starting in FY08 the Financial Institutions Division may need to hire more examiners to monitor for compliance with the bill.

CONFLICT

HB 887 is in conflict with H.B. 92. Specifically, the conflict lies on the allowable interest rates for both a new payday loan and a renewed payday loan. Moreover, H.B. 92 is limited to payday loans whereas HB 887 applies to all small loans currently allowed under the Small Loan Act.

RELATES

SB 393

TECHNICAL ISSUES

- 1) Page 7, line 17-18, clarification is needed when an applicant is a corporation or a limited liability company, etc. as an entity does not have fingerprints.
- 2) Page 9, line 10, "converted lapsing" is redundant.
- 3) Page 15, lines 6-20 and page 16 lines 8-16, clarification is needed as it is not clear

whether 3 independent bids are required when a licensed dealer sells the vehicle. It is also not clear whether a title lender may sell the loan property without the use of a licensed dealer.

OTHER SUBSTANTIVE ISSUES

In New Mexico payday lenders typically charge customers annual interest rates of 390% to 780%.

The United States Congress (federal) has adopted legislation, the Talent-Nelson Amendment, which imposes a 36% rate cap on all loans to members of the military and their dependents. This legislation goes into effect on October 1, 2007. Proposed regulations pursuant to Talent-Nelson from the Department of Defense are expected shortly.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The payday and car title loan business 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.

CS/csd