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

		ORIGINAL DATE	1/26/07		
SPONSOR	Sanchez, B	**LAST UPDATED**	2/14/07	**HB**	
SHORT TITLE	Payday Loan Interest Limits			**SB**	393/aSJC
				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

SOURCES OF INFORMATION
LFC Files

Responses Received From
Regulation and Licensing Department (RLD)
Administrative Office Of The Courts (AOC)
Attorney General (AG)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment makes technical changes and clarifies sections in the original bill.

Synopsis of Original Bill

Senate Bill 393 amends, repeals and enacts provisions of the New Mexico Small Loan Act, 58-15-1 et seq., ("the Act") as affecting small loans in the amount of $2,500.00 not exempted by the Act. Small loans not exempted by the Act would be limited to charging interest no greater than 36% APR. Interest on a renewal of a small loan not exempted by the Act would be limited to 10% APR. Finally, title loans, where a security interest is given as collateral, are banned.

SB 393 amends and enacts provisions within the New Mexico Small Loan Act or 1955.

Section 1 adds the following definitions to the Small Loan Act (NMSA 1978, § 58-15-1 et seq): "annual percentage rate," "consumer," "consumer loan," and "interest."

Section 2 adds an entirely new section to the Small Loan Act, which limits costs and fees. This section limits the interest that can be charged on any small loan currently allowed under the Small Loan Act to an effective APR of 36%. After the maturity of the loan, interest is limited to an effective APR of 10%.

Section 3 adds an entirely new section to the Small Loan Act. This section adds general prohibitions when making a small loan. Most notably, this section disallows using the title of a motor vehicle as security (i.e. this sections bans title loans.)

Section 4 provides for the following remedies and penalties:

a. a violation of Sections 2 and 3, except as a result of computation error, renders the consumer loan agreement void, and the licensee has no right to collect, receive or retain any principal, interest or other charges with respect to the loan.
b. A violation of Sections 2 and 3, except as a result of computation error, is an unfair and deceptive practice under the Unfair Practices Act.
c. A person violating Sections 2 and 3, except as a result of computation error, is liable to the consumer for actual, consequential and punitive damages plus statutory damages of $1,000 for each violation, plus costs and attorney fees.
d. A consumer may sue for injunctive and other equitable relief to stop Section 2 and 3 violations from happening.
e. A consumer may bring a class action suit to enforce Section 2 and 3 provisions.
f. An arbitration provision of a note or other contract evidencing a consumer loan is not enforceable.
g. A licensee that knowingly violates the provisions of this section is guilty of a misdemeanor.
h. A consumer is not required to waive administrative remedies or other applicable law prior to pursuing remedies set forth in this section.
i. Remedies and penalties provided in this section are in addition to and do not preclude any remedy otherwise available under state law, including any award for consequential and punitive damages.

Section 5 adds an entirely new section to the Small Loan Act. This section requires that certain disclosures be made to the consumer prior to making a loan both orally and in writing.

Section 6 adds an entirely new section to the Small Loan Act. This section exempts federal and state financial intuitions. Moreover, this section allows current pawn transactions and the interest rate allowed currently for pawn transactions.

Section 7 sets out the effective date of the bill as being July 1, 2007.

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

This bill proposes substantial consumer protection measures to limit payday loans to 36% interest and to prohibit car title loans. This is modeled after federal legislation to protect the military from many indebtedness problems that have arisen from payday lenders. This bill extents those same protections to all New Mexico borrowers.

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

There may be an administrative impact o the courts and the financial institutions division as the result of an increase in caseload and/or in the amount of time necessary to dispose of cases.

CONFLICT

S.B. 393 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 S.B. 393 applies to all small loans currently allowed under the Small Loan Act.

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.

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/mt