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FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/06

SPONSOR B. Sanchez LAST UPDATED _____ HB _____

SHORT TITLE Payday Loan Fees and Regulation SB 475

ANALYST McSherry

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY06	FY07	FY08		
	225.0	225.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Senate Bill 448 relates to and conflicts with Senate Bills 548, 475, and 636 and House Bill 409.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY06	FY07	FY08	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0-\$55.2	\$0-\$55.2	\$0-\$110.4	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Regulations and Licensing Department (RLD)
 Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

Senate Bill 475 "Payday Loan Fees and Regulation," proposes to amend the NM Small Loan Act of 1955 by:

- Adding a definition for balloon payment (Page 2 lines 1 through 5) as:
 - A provision in a loan requiring a consumer to pay a final installment of an amount

greater than prior installments and includes remaining loan principal.

- Adding a definition for payday loans (Page 3 line 14 through page 4 line 6) as:
 - “A loan in which the licensee negotiates a personal check tendered by the consumer and agrees in writing to defer presentment of the check until the consumer’s next payday or another date agreed to by the licensee and the consumer” including:
 - any money advance or credit arrangement or extension of credit for which the licensee accepts “dated instrument” or authorization signed by a consumer for transfer or withdrawal of funds for purpose of repaying a payday loan or agrees to hold a dated instrument prior to negotiating or depositing, or pays the consumer, or another person the amount to the instrument actually paid in exchange for a fee finance charge or other consideration.
- Increasing the original license fee from five hundred dollars (\$500) to seven hundred and fifty dollars (\$750) (Page 9 lines 11 and 12).
- Increasing the renewal license fee from five hundred dollars (\$500) to seven hundred and fifty dollars (\$750) (Page 12 lines 11 and 12).
- Increases the annual examination fee from two hundred dollars (\$200) to four hundred dollars (\$400) (Page 13 lines 15 and 16).
- Adding a section to the Small Loan Act regarding requirements for payday loans. Some of the requirements are that a licensee cannot make a loan to a consumer with outstanding payday loans exceeding \$1,000.00 or twenty five percent of the consumer’s gross monthly income, whichever is less, limits the consumer to 2 outstanding payday loans, minimum maturity of 120 days, minimum of 30 days between payments, no balloon payments, and the right to rescind the payday loan transaction (Page 28 line 8 through page 31 line 6).
- Capping the maximum interest amount that a payday lender can charge. The first four months \$5.50 per \$100.00 and subsequent months the lender may charge \$4.00 per \$100.00. The lender can only charge one \$15.00 fee for insufficient funds to pay the payday loan (Page 31 line 9 through Page 32 line 14 caps).
- Adding a section to the Small Loan Act regarding prohibited practices when a small loan licensee makes payday type loans. Some of the prohibited practices addressed in the section are that the licensee cannot use the criminal process to collect on a payday loan, the licensee cannot charge a fee to cash a check representing the proceeds of a payday loan and the licensee cannot have more than one payday loan to a consumer at a time for all licenses operated under the same trade name. Agency or partnership agreements are prohibited if they are used as a scheme or contrivance to circumvent the Act. The new section also addresses additional consumer protections (Page 32 line 17 through page 35 line 25).
- Limiting the renewal of a payday loan to one time (Page 36 lines 3 through 7).
- Requiring the Director of the Financial Institutions Division to certify a commercially reasonable method of verification to be used by payday lenders in order for them to meet the requirements of the bill regarding payday loans (Page 36 line 10 through page 39 line 10).
- Adding additional protections for military members who enter into a payday loan agreement. The licensee can no longer garnish the wages or salaries of a consumer who is a member of the military or contact the military chain of command of a consumer who is a member of the military in an effort to collect on a payday loan (Page 39 lines 13 through

25).

- Making the effective date of the provisions of the bill is October 1, 2006 (Page 40 lines 19 and 20).

FISCAL IMPLICATIONS

Increases in revenue were estimated by assuming that renewal licenses may decrease to 600 from 700 due to the licensure increases and additional constraints provided in the proposed act.

The renewal license fee increase from \$500.00 to \$750.00 for renewals would result in an additional \$250 made for each license. 100 less renewals than a typical year would decrease revenues by \$25,000. The increase in examination fees from \$200.00 to \$400.00 and estimated for 600 licenses would result in an additional \$200/license and an absolute loss of 100 licensees, decreasing revenues by \$20,000.

Small Loan Company License Renewals estimated at 600	\$150,000.00
Reduced by fewer licensees	(\$25,000.00)
Examinations estimated at 600	\$120,000.00
<u>Reduced by fewer examinees</u>	<u>(\$20,000.00)</u>
Total	\$225,000.00

According to RLD, there may be additional budget impact starting in FY07 if the Financial Institutions Division has to hire more examiners to monitor the licensees for compliance with the provisions of the bill. Because a reduction in the future number of licensees is likely, however, it is not known if the workload would increase for small loan regulation.

Estimated cost per examiner:

Salary @ \$30,000 + 30% benefits	\$39,000
Office space @ 150 sf @ \$20 per sf	3,000
Per Diem @ \$275 per week times 26 weeks	7,150
Car	<u>6,000</u>
Estimated cost per examiner	\$55,150

SIGNIFICANT ISSUES

AOC cites that:

- 1) Section 57-12-10 NMSA 1978 provides that

B. Any person who suffers any loss of money or property, real or personal, as a result of any employment by another person of a method, act or practice declared unlawful by the Unfair Practices Act [57-12-1 NMSA 1978] may bring an action to recover actual damages or the sum of one hundred dollars (\$100), whichever is greater. Where the trier of fact finds that the party charged with an unfair or deceptive trade practice or an unconscionable trade practice has willfully engaged in the trade practice, the court may award up to three times actual damages or three hundred dollars (\$300), whichever is greater, to the party complaining of the practice.

According to the Office of the Attorney General, The regulations of the Attorney General, NMAC 12.2.10, provide for limitations on interest rates, term minimum and other loan terms consistent with the Unfair Practices Act. These regulations are effective February 15, 2006.

It is not clear how many businesses which currently make payday loans would continue to do so under the proposed provisions and therefore it is unknown how much revenues and oversight would change with the proposed amendments.

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 and RLD contents that this could affect the Financial Institutions Division's performance measure of examination turnaround in 30 days.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

RLD cites NMAC Title 12 Chapter 2 Part 10 Extension of Credit for Payday and Car Title Loans. Senate Bill 448 relates to a Rule promulgated by Attorney General to be effective 2-15-06, SB 448 and to Senate Bills 548, 475 and 636; Senate Bill 448 also relates to House Bill 409.

TECHNICAL ISSUES

RLD cites the appearance of conflict in the bill regarding the use of the words "interest" and "administrative fees." Page 31 lines 14 through 16 state that the licensee may charge interest on a payday loan, while on page 30 lines 5 through 9 states that after a payment is made the receipt should show the amount credited towards administrative fees and principal. Page 30 lines 2 and 3 states that "payments against principal shall be equally divided through the term of the payday loan". Normally the amount paid is credited against accrued interest first with the remainder towards principal which is standard industry practice for all financial institutions. Page 31 lines 14 through 16 states "upon the execution of a new payday loan, the licensee may charge interest that is payable during the term of the payday loan at a rate" while page 32 lines 5 through 7 states "a licensee shall not charge a consumer interest on the outstanding principal owed on a payday loan other than the administrative fees as set forth in this section."

OTHER SUBSTANTIVE ISSUES

RLD contends that the rules promulgated by the Attorney General regarding Payday lending are significantly different than the bill. The Attorney General's rule becomes effective on 2-25-06 and the provisions of the bill would become effective 10-1-06.

AOC points out that:

- 1) SB 475 amends Section 58-15-30 NMSA 1978 to provide that a party who violates or participates in the violation of any provision of the New Mexico Small Loan Act of 1955 is guilty of a misdemeanor and is subject to a fine of from \$500 to \$1,000 or by imprisonment of up to 6 months or both.

At the same time,

- 2) Section 57-12-10 NMSA 1978 provides that
 - B. Any person who suffers any loss of money or property, real or personal, as a result of any employment by another person of a method, act or practice declared unlaw-

ful by the Unfair Practices Act [57-12-1 NMSA 1978] may bring an action to recover actual damages or the sum of one hundred dollars (\$100), whichever is greater. Where the trier of fact finds that the party charged with an unfair or deceptive trade practice or an unconscionable trade practice has willfully engaged in the trade practice, the court may award up to three times actual damages or three hundred dollars (\$300), whichever is greater, to the party complaining of the practice.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the Office of the Attorney General, the regulations promulgated by the Attorney General, NMAC 12.2.10, will take effect on February 15, 2006, imposing interest rate caps, a minimum 120 day term and other limitations on payday lenders.

POSSIBLE QUESTIONS

1. What is the significance of the proposed start date of October 1 2006?
2. How are the attorney general rules different than the proposed bill?
3. How many inspectors currently oversee small loan lenders? How many businesses does each inspector typically oversee? What additional workload per inspection is expected based on the new requirements included in this bill?

EM/mt