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

SPONSOR Boitano **DATE TYPED** 2/8/04 **HB**

SHORT TITLE Home Loan Flipping Claim Protection **SB** 473

ANALYST Kehoe

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
	NFI				NFI

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Senate Bill 228.

SOURCES OF INFORMATION
LFC Files
New Mexico Mortgage Finance Authority

SUMMARY

Synopsis of Bill

Senate Bill 473 amends the Home Loan Protection Act to add the term "high-cost" in the description of flipping home loans and repeals a section concerning claims against certain persons.

Significant Issues

"Flipping a home loan" means the making of a home loan to a borrow that refinances an existing home loan when the new loan does not have reasonable, tangible net benefit to the borrower considering all the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan and the borrower's circumstances.

Senate Bill 473 provides that no creditor shall knowingly and intentionally engage in the unfair act or practice of flipping a "high cost" home loan rather than for any and all home loans. This bill would narrow the pool of home loans for which flipping loans would be prohibited.

The bill also repeals Section 58-21A-7 NMSA 1978 (Laws of 2003, Chapter 436, Section 7) of the Home Loan Protection Act which took effect January 1, 2004, that states if the borrower of a manufactured home loan or home improvement loan determines he or she has fallen victim to abusive lending practices, he or she may file damages against the originator of the loan as well as

any subsequent purchaser, servicer, or other assignee. Damages are limited to "amounts required to extinguish the borrower's liability under the home loan, plus the total amount paid by the borrower in connection with the transaction, plus amounts required to recover costs, including reasonable attorney fees."

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 228 also repeals Section 7 of the Home Loan Act.

According to MFA, financial institutions that originate, purchase, service, or otherwise play a role in manufactured housing lending and/or home improvement loans are unwilling to participate in these kinds of transactions because they cannot justify the potential liability associated with them. While it is true that many state- and federally-chartered institutions benefit from certain preemptions granted by the Office of Thrift Supervision and Financial Institutions Division, these institutions state that the preemptions typically do not extend to loans they purchase, service, or receive as an assignee. Repeal of Section 7 would significantly limit the assignee liability associated with these types of loans and may restore markets for these loans.

OTHER SUBSTANTIVE ISSUES

According to MFA, financial institutions that originate, purchase, service, or otherwise play a role in manufactured housing lending and/or home improvement loans are unwilling to participate in these kinds of transactions because they cannot justify the potential liability associated with them. While it is true that many state- and federally-chartered institutions benefit from certain preemptions granted by the Office of Thrift Supervision and Financial Institutions Division, these institutions state that the preemptions typically do not extend to loans they purchase, service, or receive as an assignee. Repeal of Section 7 would significantly limit the assignee liability associated with these types of loans and may restore markets for these loans.

LMK/yr