

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

SPONSOR HJC DATE TYPED 03/15/05 HB 65HJCS/aHCTC  
 SHORT TITLE Payday Loan Regulation SB \_\_\_\_\_  
 ANALYST McSherry

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
NFI	\$270.0	\$270.0	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

House Bill 64 relates to Senate Bill 200, the Consumer Loan Act.

### SOURCES OF INFORMATION

LFC Files  
 Economic Development(ED)  
 Department of Labor (DOL)  
 Regulations and Licensing Department (RLD)

### SUMMARY

#### Synopsis of Senate Corporations and Transportation Committee Amendments

The first amendment increases the proposed cap on payday loans from \$1,000 dollars to \$1,500 dollars.

The second amendment provides that a provision under “requirement for payday loans” would require a licensee to permit the renewal, refinancing or extension of the payday loan should the payee have paid an amount equal to or greater than 20 percent of the original principal balance at, or prior to, maturity.

The third amendment provides that, under the proposed “permitted charges” section, the proposed aggregate interest is capped at one hundred percent of the original loan balance.

The fourth amendment provides that the proposed cap of the total aggregate amount of principal and interest received by the licensee would include principal and interest paid by a consumer pursuant to a court order following a default.

Synopsis of Substitute Bill

House Bill 65 amends the Small Loan Act of 1955. The amended act would require that all loans made under the Small Loan Act use the simple interest method calculation for interest computation. Pre-computed loans would no longer be allowed under the Small Loan Act. The amendment would create five new sections addressing payday type loans: payday loan requirements, permitted charges, prohibited acts, data collection and additional required disclosures.

HB 65 sets new dollar regulations for most fund transactions involved in the payday loans. Lines of credits in excess of two thousand five hundred dollars (\$2,500) would not need to be secured by real estate. Fees would be increased for payday lenders: the original license fee would increase from five hundred dollars (\$500) to seven hundred and fifty dollars (\$750); the renewal license fee would increase from five hundred dollars (\$500) to seven hundred and fifty dollars (\$750) and the annual examination fee would increase from two hundred dollars (\$200) to four hundred dollars (\$400).

The 1<sup>st</sup> new section would set limitations for small loan licensees who make payday type loans and would allow a consumer the right to rescind the payday loan transaction. The section would require the lender to allow a consumer to make partial payments in any amount on the payday loan and would limit payday loans made to a maximum of one thousand dollars (\$1,500). Consumer protections such as requiring a check written by a consumer for a payday loan to be made payable to the order of the licensee, requiring a receipt detailing the payment transaction and requiring the licensee to provide a copy of the payday loan agreement in English or Spanish, prior to the consummation of the loan to all parties involved in the payday loan are all included in HB 65's proposed amendments. The bill also proposes the requirement that the licensee will have available a consumer information brochure in English and Spanish as determined by the director.

The 2<sup>nd</sup> new section would address permitted charges for small loan licensees who make payday type loans. It would limit the amount of interest that a licensee can collect on a payday loan to two times the original principal balance. If the aggregate limit were to be reached, the licensee would have to terminate the payday loan agreement and consider the loan to have been paid in full. The licensee would not be able to collect on the original principal balance once the aggregate limit is reached. The section would limit the charge for a check with insufficient funds to \$15.00 even if the check has been re-deposited and returned more than once.

The 3<sup>rd</sup> new section would prohibit certain practices when a small loan licensee makes payday type loans. Prohibited practices specifically addressed are: licensee use of the criminal process to collect on a payday loan, altering checks in payday transactions, breaking from regulations set in the Small Loan Act or participating in any other fraudulent activity, accepting collateral other than a consumer's checks, licensee assessment of a fee to cash a check representing the proceeds of a payday loan, including certain provisions in the payday loan agreements, making the loan contingent upon another purchase, portraying payday loans deceptively and licensee issuance of more than one payday loan to a consumer at a time.

The 4<sup>th</sup> new section would require a small loan licensee that issues payday loans to file an annual report with the Financial Institutions Division for data collection purposes.

The 5<sup>th</sup> new section would require licensees to disclose information above the required consumer signature in at least 10 point type stating:

“A payday loan is not intended to meet long-term financial needs. You should use a payday loan only to meet short-term cash needs. You will be required to pay additional interest if you renew the payday loan rather than pay the debt in full when due. A payday loan is a high-interest loan. You should consider what other lower-cost loans are available to you. The aggregate amount of principal and interest you pay on your payday loan is capped at two times the amount of the original principal borrowed. At no time will you pay an amount greater than two times the original principal amount of the loan.”

### Significant Issues

According to the Economic Development Department, payday lenders have received negative publicity about charging predatory amounts to financially disadvantaged clients and for charging extremely high interest rates and fees for their loans.

If enacted, the total aggregate amount of interest on payday loans would be limited to one hundred percent of the original loan balance, and would include principal interest paid by a consumer pursuant to court order following a default and . The consumer would also be provided the right to rescind a payday loan by returning the full amount advanced on the first day of business following the execution of the agreement.

### **PERFORMANCE IMPLICATIONS**

No performance measure implications were noted by any agencies, however RLD would be the agency responsible for administration of the amended statute should it pass and performance could be affected.

### **FISCAL IMPLICATIONS**

House Bill 65 does not include an appropriation.

According to RLD Financial Institutions and Securities Division, the enactment of the bill would generate additional revenue for FY06 with the proposed increases in original and renewal license fees from \$500.00 dollars to \$750.00 dollars and the increase in examination fees from \$200.00 dollars to \$400.00 dollars.

The following revenue estimate was predicted by RLD, based on the increased amount of the license and examination fees and not the total revenue generated.

Small Loan Company License Renewals estimated at 600	\$150.0
Examinations estimated at 600	<u>\$120.0</u>
Total	\$270.0

(numbers in thousands)

With increased fees and restrictions on the industry, it is possible that the number of licenses renewed would be reduced and that revenues would not be as great as the prediction calculated by RLD. The estimate uses historic information, based during a time without the increased fees and examination costs, and without the industry regulations that are proposed.

Fewer lenders maintaining licenses with the Department would cause lost revenue, however the Department contends that NM is one of the states with the lowest cost for licensing small loan lenders and that there would likely not be a decrease in the number of licensees due to the proposed increase in fees.

**ADMINISTRATIVE IMPLICATIONS**

The Regulations and Licensing Department would be responsible for the administration of the amended licensing requirements and oversight.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB 65 relates to SB 200, the Consumer Loan Act.

**OTHER SUBSTANTIVE ISSUES**

This proposed changes to the Small Loan Act address payday type lending and offer additional consumer protections. RLD cites that the bill will result in additional regulatory burden and increased costs to the small loan companies that issue payday loans.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

The Department of Labor asserts that borrowers will continue to pay exorbitant interest rates on payday loans should HB 65 not be enacted

Payday loans would remain readily available to consumers without additional disclosures, renewal restrictions, maximum loan amount, or other restrictions which would be imposed by enactment of this bill. According to RLD, consumers would not benefit from the additional consumer protections regarding payday loans which would be provided for should HB 65 be enacted.

**EM/lg:yr**