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FISCAL IMPACT REPORT

SPONSOR Altamirano DATE TYPED 02/25/05 HB _____

SHORT TITLE Refund Anticipation Loan Conditions SB 876

ANALYST Ford

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Corrections (NMDC)
 Regulation and Licensing Department (RLD)
 Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 876 establishes conditions for refund anticipation loans. The bill limits the maximum amount of a refund anticipation loan to \$2.5 thousand, provides the consumer with a right to rescind the agreement, establishes the fees that can be charged, provides that fees and other charges may not exceed an amount totaling 1.5 times the original loan agreement principal and provides other conditions for refund anticipation loans.

A violation of these provisions is a misdemeanor and shall be punishable by a fine not less than \$100 and not more than \$300. Each loan constitutes a separate action under this section.

FISCAL IMPLICATIONS

The enforcement of this bill is not likely to have a significant fiscal impact to the state.

TECHNICAL ISSUES

The TRD raises a number of technical issues:

1) Section 1(A), p. 1, lines 19-20. Provides that a refund anticipation loan shall not exceed \$2,500. Later, in subsection (F)(6), the bill prohibits loans in excess of the refund amount. Given this, it might be clearer if subsection (A) were revised to state: “A refund anticipation loan shall not exceed two thousand five hundred dollars (\$2,500) or the total amount of the refund or refunds, whichever is less.”

2) Section 1(D)(2), p. 2, lines 23-25 & p. 3, lines 1-5. This provision limits the amount a creditor can charge for a refund anticipation loan to “simple interest on the amount of loan proceeds delivered to the consumer in a refund anticipation loan, the aggregate amount of which includes all interest and all administrative fees received on the loan, including interest received after any renewals, refinance or extensions, and the total aggregate amount may not exceed one and one-half times the amount of the original loan agreement principal balance.”

The provision is drafted a bit awkwardly. It might be clearer if it were changed so that the creditor could charge only “simple interest on the amount of loan proceeds delivered to the consumer in a refund anticipation loan. No other interest or fee, other than those specifically provided in this section may be charged. Total interest charged in connection with a refund anticipation loan, including any renewals, refinance or extensions, may not exceed one and one-half times the amount of the original loan agreement principal balance.”

3) Section 1(F)(7), p. 4, lines 10-11. This provision prohibits a creditor from accepting “collateral for a refund anticipation loan other than the consumer’s check.” This is somewhat inaccurate because, in contrast to a payday loan, the collateral for a refund anticipation loan is not the consumer’s check; it is the proceeds of the consumer’s income tax refund.

4) Section 1(H)(1), p. 7, lines 3-9. The definition of “creditor” for purposes of the bill is very broad and would encompass intermediaries involved in a refund anticipation transaction that do not deal directly with a borrower, such as a check preparation service that prepares checks on behalf of a lender for issuance to borrowers, and persons who might refer borrowers to creditors who make refund anticipation loans.

5) Section 1(H)(2), p. 7, lines 12-14. This provision uses the term “debtor’s” (line 14) while the rest of the bill refers to “consumers”. The term “debtor’s” might be changed to “consumer’s” to make it consistent.

RLD raises the following concern:

The bill prohibits a tax return preparer and a creditor that makes refund anticipation loans from being related. It would be difficult to determine the relationships that would be eligible for a refund anticipation loan using Section G as the guideline. For example a tax preparer may own stock in a corporation through a mutual fund and not know that he or she has violated the law. The use of the words “lineal descendants” is also very broad and would be impossible to measure without clarification.