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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 1/29/06  
**SPONSOR** HJC **LAST UPDATE** 2/15/06 **HB** 409/HJCS/aSJC/aSCORC  
**SHORT TITLE** Payday Load Fees and Regulations **SB** \_\_\_\_\_  
 \_\_\_\_\_ **ANALYST** McSherry

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY06	FY07	FY08		
	\$200.0	\$200.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Companion to SB 488

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY06	FY07	FY08	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$10-\$110	\$10-\$110	\$20-\$220	Recurring	General

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Regulation and Licensing Department (RLD)

### SUMMARY

#### Synopsis of SCORC Amendments

The Senate Corporations and Transportation Committee amendments strike the Senate Judiciary Amendments (below), and return the bill to the “Substitute Bill” state as described under “Synopsis of Substitute Bill.”

### Synopsis of SJC Amendments

Senate Judiciary Committee amendments to the HJC substitute of House Bill 409, “Payday Load Fees and Regulations” made the following changes:

- Removed the provision that a payday loan could be made for a term of less than 14 days should “the consumer and licensee agree in writing to a shorter term.” (page 29)
- Provided that a licensee can not (rather than may not as in the substitute bill) charge or receive from a consumer, directly or indirectly, fees or charges except as provided
- Removed the allowance of administrative fees to be owed on payday loan products.
- Added two new sections to the Small Loan Act:
  - A “Duties of Division” section providing Financial Institutions and Securities Division responsibility to:
    - Maintain a list of licensees, and establish a complaint process
    - Compile an annual legislative report with statistics regarding payday loan lending practices in New Mexico including financial summaries of the amount of funds being lent and for what amounts, including previous year comparison numbers.
  - A “Payday Lending Enforcement Fund” section which providing for:
    - A non-reverting fund with an appropriation of \$1,000,000.
    - Use of fund dollars for prosecution and investigation of Small Loan Act violations.
- Deleted two existing sections of the Small Loan Act, 58-15-15 “Precomputation of Charges Permitted” and 58-15-19 “Loans under other laws.”

### Synopsis of Substitute Bill

The House Judiciary Committee Substitute for House Bill 409 proposes to amend the New Mexico Small Loan Act of 1955 to addresses small loan licensees payday type loan requirements, permitted charges, prohibited acts, collection practices, and additional required disclosures.

If enacted, the bill would:

- Define a payday loan and renewed payday loan 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:

- Money advances or credit arrangements or extensions of credit for which the licensee accepts a dated personal check or debit authorization for the purpose of repaying a payday loan or holding a dated instrument prior to negotiating or depositing, paying the consumer, or another person the amount to the instrument actually paid in exchange for a fee finance charge or other consideration.

And excluding:

- Overdraft products and services offered by banking corporations, savings and loan association or credit union and installment loans (pg. 4).
- Increase the small loan lender licensee fee and renewal fee from five hundred dollars \$500 to seven hundred and fifty dollars \$750 (pg. 13).
- Increase the annual examination fee from two hundred dollars \$200 to four hundred dollars \$400 (pg. 14).
- Require licensees to provide the borrower, if requested, a statement in Spanish with the

amount of the loan, payment descriptions, dates, name of licensed office, amount of principal, agreed rate of charge, and all other state and federal disclosures (pg. 23).

- Add a section regarding payday loans requirements providing (pg 29):
  - That a licensee cannot make a loan to a consumer with outstanding payday loans exceeding \$1,500.00 or thirty percent of the consumer's gross monthly income, whichever is less,
  - The consumer is limited to 2 outstanding payday loans, and no loans for consumers under a payday loan repayment plan (pg. 30),
  - That payday loans can have a minimum term of 14 days and a maximum of 35 days, and
  - That there should be a scheduled pay date for the consumer within the term of the payday loan and the right to rescind the payday loan transaction.
- Amend the Small Loan Act section "Fees and Costs" and "Payday Loan Products" to:
  - Cap delinquency fees to 5 cents per dollar and total delinquency charges on any installment to 10 dollars (pg. 27)
  - Caps the number of delinquency fees charged to one per installment, regardless of the number of periods the particular installment is late.
  - Cap the maximum fee amount that a payday lender can charge. For a new loan, for the first \$300.00 the lender may charge \$17.00 per \$100.00, \$15.00 per additional \$100.00 up to \$500.00, and an additional \$13.00 per hundred up to \$1,500.00. If the consumer renews the payday loan, the lender may charge, for the first \$300.00, \$15.00 per \$100.00, \$13.00 per additional \$100.00 up to \$500.00, and an additional \$11.00 per hundred up to \$1,500.00. The lender can only charge one \$15.00 fee for insufficient funds to pay the payday loan (pg. 32).
- Prohibit certain practices when a small loan licensee makes payday type loans, such as (pg 35-37):
  - The licensee could not use the criminal process to collect on a payday loan,
  - The licensee could not 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.
- Limit payday loan renewal to one time (pg. 38).
- Require the licensee to allow a consumer that has renewed a payday loan one time to enter a repayment plan which allows the consumer to payoff the payday loan in equal installments up to 98 days fee free (pg. 38).
- Require the consumer to have a 7 day waiting period before entering into a new payday loan agreement if certain conditions are met (pg. 39).
- Require 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 (pg. 39).
- Require additional disclosures on a payday loan document (pg. 43).
- Make the effective date of the changes November 1, 2006 (pg. 44).

## FISCAL IMPLICATIONS

According to RLD, the proposed bill would generate additional revenue for FY07 with the in-

crease in original and renewal license fee from \$500.00 to \$750.00 and the increase in examination fees from \$200.00 to \$400.00.

Revenue estimate is based only on the increased dollar amount of the renewal license and examination fees and not the total revenue generated. Currently there are over 700 small loan licensees. With the new provisions regarding Payday lending, estimates regarding how many licensees would choose not to renew their license indefinite, however therefore; an estimate of 600 is used for the calculation.

License increase of \$250.00/license, number of (renewals estimated at 600):	\$150,000.00
Reduced by the loss of 100 licensees (\$500*100)	(\$50,000.00)
Examinations increase of \$200.00/exam (estimated at 600)	\$120,000.00
<u>Reduced by the loss of 100 licensees (\$200*100)</u>	<u>(\$20,000.00)</u>
Total	\$200,000.00

RLD asserts that there may be additional budget impact beginning in FY07. The Financial Institutions Division projects that it could need to hire more examiners to monitor the licensees for compliance with the provisions of the bill.

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

The estimated additional operational impact above has been estimated based on the increased workload for the new requirements costing in the range of \$10 thousand (some increased workload, potentially contracted) to \$110 thousand (hiring an additional 2 examiners 350 licensees/inspector)

## SIGNIFICANT ISSUES

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.

Workload for the Financial Institutions Division and how the licensee pool could increase or decrease with the proposed changes depending upon the level of licensee pool changes which result from the proposed regulations.

According to the Office of the Attorney General, subsection (A) would increase the total amount of debt that consumers may incur and would place consumers at greater financial risk. OAG asserts that most states limit payday loans to \$500.00. The amendment triples that typical limitation.

OAG further asserts that:

Subsection (C), which removes the 14-day minimum loan term, would permit the lender

and borrower to agree in writing to a term shorter than 14 days. This amendment significantly increases the cost to borrowers of this loan product. At a 14-day term, the permitted \$17 per \$100 borrowed equates to 443% APR. If the loan is, e.g., for a 3-day term, the APR is 2,068%. Consideration of the APR permitted by the provisions of HB 409 is important. The federal Truth-in-Lending Act requires disclosure of finance charges, including an Administrative Fee such as the one contemplated by this proposed legislation, so that consumers have the opportunity for “an informed use of credit.” 15 USC 1601(a). “It is the purpose of [the Truth-in-Lending Act] to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.” *Id.* The description of this finance charge as an “Administrative Fee” appears to circumvent the intent of the federal Truth-in-Lending Act to provide consumers with a uniform system of disclosure that will permit meaningful comparisons of the cost of credit.

OAG cites:

Section 13, 58-15-33 as a section which would result in an increase in finance charges to the consumer, again increasing the effective APR of the loan transaction.

Subsection (E) adds a new “electronic verification fee” amount, to be determined by Director, that could be charged upon execution of a new payday loan.

Subsection (G) adds a prohibition on more than one redeposit of a rejected check or electronic debit without the consumer’s consent. This provision protects the consumer from the existing abusive practice of repeated re-deposits and related bank fees.

## 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 with this bill in addition to their current examination responsibilities. This could affect the Financial Institutions Division’s performance measure of examination turnaround in 30 days.

## ADMINISTRATIVE IMPLICATIONS

Starting in FY07 the Financial Institutions Division may need to redistribute, or hire examiners to monitor for compliance with the bill. According to RLD, it is difficult to determine what effect the new provisions of the bill will have regarding the number of small loan licensees.

The Financial Industries Division will have the additional responsibilities of indexing the Administrative Fee to the CPI at least every three years; promulgating regulations for the consumer reporting service and determining an appropriate fee to be charged consumers for verification through the consumer reporting service.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 409 relates to Senate Bills 548, 475, 448 and 636. The bill also relates to NMAC 18-12-4 “Mandatory Signage for Payday lenders and title loan companies.

## **OTHER SUBSTANTIVE ISSUES**

The substitute bill removes military-specific provisions included in the originally-introduced bill.

According to RLD, the rules promulgated by the Attorney General regarding Payday lending are significantly different than the proposed bill. The Attorney General's rule becomes effective on 2-25-06 and the provisions of the bill become effective 11-1-06.

### **OAG cites the following sections and potential problems:**

Section 12 The description of the finance charge as an “Administrative Fee” appears to circumvent the intent of the federal Truth-in-Lending Act to provide consumers with a uniform system of disclosure that will permit meaningful comparisons of the cost of credit.

Section 13 The requirement that the administrative fee be fully earned and nonrefundable may violate the Federal Rebate Act, 15 U.S.C. 1615(a), in certain circumstances. The Act provides that “If a consumer prepays in full the financed amount under any consumer credit transaction, the creditor shall promptly refund any unearned portion of the interest charge to the consumer.” The only exception to this is for refunds that are less than \$1.00.

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

The NM Small Loan Act will be maintained in its current state. Payday loan businesses would not be required additional disclosures, caps on fees and charges, maximum loan amount, or other restrictions which would be imposed by this bill.

## **POSSIBLE QUESTIONS**

1. What is the significance of the proposed start date of November 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 or time commitment per inspection is expected based on the new requirements included in this bill?

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