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FISCAL IMPACT REPORT

ORIGINAL DATE 2/3/09

SPONSOR HAFC LAST UPDATED 3/17/09 HB 406/HAFCS

SHORT TITLE Title Loan Fees & Regulation SB _____

ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)
Attorney General's Office (AGO)

SUMMARY

Synopsis of HAFCS Substitute

The HAFCS Substitute for HB 406 ("Title Loan Act") adds additional guidelines for the Financial Institutions Division ("FID") of the Regulation and Licensing Department ("RLD") of the State of New Mexico. Specifically, the bill makes it unlawful to act as a motor vehicle title lender without first obtaining a license from the FID pursuant to the requirements set forth therein; and it makes a violation of the Title Loan Act a violation of the Unfair Practices Act.

In addition to making the practice of title lending unlawful without first obtaining a license from the FID, Section 3 of the Act also makes void any title loan product agreements entered into by a non-licensed title lender, and eliminates the right of a title lender to collect, receive or retain any interest, fees or charges to which it would otherwise be entitled under the terms of such an agreement. This Section also helps a consumer who enters into a title loan product agreement with a title lender who materially violates any of the obligations set forth in Sections 6-11 of the Act of any obligations under the terms of such an agreement, except that the consumer must repay the principal sum borrowed within a reasonable time after some entity determines that the title loan product is void, and after the title lender releases any lien on the motor vehicle and returns the certificate of title.

Section 3 also contains provisions which require title lenders to identify the physical location of the office to which a license would apply (and requiring that the license be conspicuously displayed in that office) and which also require them to notify the FID of any change in physical location. These provisions also dictate that one license cannot cover more than one physical office location for any title lender, though a title lender may obtain multiple licenses if it is otherwise qualified.

Section 3 further requires that title lenders post a surety bond, in the amount of \$50,000 for each physical officer location, but not to exceed \$250,000 per title lender. The bond is available to pay damages and penalties to consumers who are harmed by violations of the Act.

Section 4 exempts from application of the Act any “banking corporation, savings and loan association or credit union operating under the laws of the United States or of a state” from the requirements of the Act.

Section 5 outlines the administrative process for approval and denial of an original license application, renewal of an existing license, and revocation thereof.

Sections 6-11 of the Act set forth a title lender’s obligations under the Act.

Section 6 sets forth a list of requirements for all title loan products, which include, among other things: a cap on the contract rate of interest for title loan, such that loans with a principal amount of \$2500 or less are capped at a simple interest rate of 45% and loans with a principal amount of \$2500 or more are capped at a simple interest rate of 36%; a prohibition on charging any interest or fees not specifically enumerated in the Act; requires that title loans be payable in substantially equal payments over a maximum loan period of 12 months, with a minimum loan period of 60 days for loans with a principal amount of \$2500 or less, and a minimum loan period of 120 days for loans with a principal amount of \$2500 or more. This Section also provides for a payment plan of ten months should the consumer have an unpaid balance on the loan at the date of maturity, and regulates the rate of interest on payment plans under the same rules that apply to the underlying title loan. Section 6 also contains provisions which regulate the contract rate of interest on these loans indirectly. For example,

Section 7 limits the interest, fees and other charges that a title lender can charge or receive from a consumer in a title loan product agreement.

Section 8 sets forth the notice requirements and required terms for a payment plan in the event that the consumer still owes a balance on a loan that has reached its maturity date.

Section 9 sets forth the procedures the title lender must follow in the event that it must collect a title loan in default and repossess and sell the vehicle securing the title loan. Among other things, Section 9 provides the consumer with a redemption up until the time of sale, and provides that the title loans are strictly nonrecourse in nature and therefore limits the title lender solely to repossessing and selling the motor vehicle to satisfy any amount owed under a title loan product agreement.

Section 10 sets forth a list of prohibited practices for a title lender. Its provisions govern the types of consumers to which title loans can be made; circumscribes the collection activities of title lenders; prohibits the charging of a variety of ancillary charges and fees in connection with

title loans; and prohibits the use of agency or partnership agreements with non-regulated banking/lending institutions in order to circumvent application of the Act.

Section 11 sets forth a list of required disclosures which must be included above the consumer's signature line in all title loan agreements and renewed title loan agreements.

Sections 12 and 13 set forth certain duties of the FID division, which include reporting requirements; the establishment of a complaint process; and the certification and use of a commercially reasonable method of verifying that a proposed loan agreement is permissible under the Act. The division director must certify no later than November 1, 2009 that one or more consumer reporting service databases are commercially reasonable methods of making such verifications.

FISCAL IMPLICATIONS

The Act does not provide for appropriation for additional staff to handle these administrative investigations and prosecutions. However, the AGO and RLD should be able to absorb any costs associated with the implementation of this legislation.

SIGNIFICANT ISSUES

The Bill requires title lenders for loans of \$2,500.00 or less to have a maturity date of a minimum of 60 days and for loans over \$2,500.00 to have a maturity date of a minimum of 120 days. The Bill also caps the interest rate that can be charged by the title lender as noted above. According to RLD, effective date of November 1, 2009 may not be achievable due to administrative preparation required, promulgation and implementation of regulations and the uncertainty of identifying an available database provider.

OTHER SUBSTANTIVE ISSUES

HB 406 would help remedy current malpractices. According to the AGO, a consumer who takes out a loan of \$1,000, based on current industry practices, will be charged interest of at least 300% per annum or 25% per month. The loan term of 30 days will result in payment of \$1,250 due at the end of the 30 day term. If the borrower cannot repay the interest plus principal, the loan will be rolled over, at the discretion of the lender. Currently, the average number of rollovers is 5 times per loan. If the loan is rolled over 6 times, the borrower will be charged \$1,500 in interest plus principal of \$1,000; the total sum of \$2,500 would be due at the end of the final rollover term.

RELATIONSHIP

SB 331

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Consumers will not have the consumer protections as contemplated in this Bill.

CS/mt:mc