COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3147-01
Bill No.: SB 895
Subject: Housing, Business and Commerce; Attorney General, State; Consumer Protection
Type: Original
Date: January 14, 2004

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
General Revenue*	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on General Revenue Fund*	**(Unknown)**	**(Unknown)**	**(Unknown)**

***Expected to be less than $100,000**

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Total Estimated Net Effect on All State Funds	**$0**	**$0**	**$0**

Numbers within parentheses: ( ) indicate costs or losses.
This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Total Estimated Net Effect on All Federal Funds	**$0**	**$0**	**$0**

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Local Government	**$0**	**$0**	**$0**

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Economic Development - Division of Finance** and **Division of Credit Unions, Department of Insurance,** and **Office of State Public Defender** state that this proposed legislation will have no fiscal impact on their agencies.

Officials from the **Office of State Courts Administrator** state this proposal will have no fiscal impact on the Courts.

Officials from the **Office of Attorney General (AGO)** have discussed this proposal with officials from the North Carolina and Georgia's Attorney General's offices. Based on those offices' experience with a similar measure, AGO assumes that any potential costs arising from this proposal can be absorbed with existing resources.

Officials from the **Office of Prosecution Services** state that costs to prosecutors resulting from this proposal can be absorbed.

Officials from the **Department of Corrections (DOC)** assumed supervision through probation or incarceration would result in additional unknown costs to the department. Eight (8) persons would have to have been incarcerated per fiscal year to exceed $100,000 annually. Due to the narrow scope of this new crime, it was assumed the impact would be less than $100,000 per year.

FISCAL IMPACT - State Government	FY 2005 (10 Mo.)	FY 2006	FY 2007
GENERAL REVENUE FUND			
Cost - Department of Corrections			
Probation and incarceration expense*	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND*	**(Unknown)**	**(Unknown)**	**(Unknown)**

***Expected to be less than $100,000**

FISCAL IMPACT - Local Government	FY 2005 (10 Mo.)	FY 2006	FY 2007
	$0	**$0**	**$0**

FISCAL IMPACT - Small Business

This proposal could fiscally impact those small businesses that deal with high-cost home loans.

DESCRIPTION

This proposal regulates high-cost home loans and establishes certain lender reporting requirements. Provisions of the proposal include:

ATTORNEY GENERAL'S POWERS

SECTION 407.020

Deletes a portion of current law which prohibits the Attorney General from moving forward with a unfair practice charge against a company under the supervision of the Department of Insurance, Director of the Division of Credit Unions or the Division of Finance.

PROHIBITED PREDATORY LENDING PRACTICES

SECTION 408.740; 408.742

No prepayment penalties are allowed with respect to high cost home loans. Lenders are prohibited from engaging in the practice of negative amortization. Lenders are prohibited from

DESCRIPTION (continued)

engaging in the practice known as loan flipping. Lenders are prohibited from encouraging default on an existing loan in the connection with the closing of a consumer home loan. Lenders must reasonably believe that borrowers can repay the loan based on current and expected income, debt, and other financial resources other than the borrower's equity in his or her home. A borrower shall be presumed to be able to make payments under the loan if the borrower's total monthly debts do not exceed 50% of the borrower's monthly gross income. Lenders may not charge a fee for an unprovided service or misrepresent the amount charged by a third party service. Lenders may not make misleading statements with respect to a residential loan transaction regarding the borrower's ability to qualify. Lenders may not compensate or intimidate an appraiser regarding the value of real estate. Lenders may not finance certain forms of insurance through the home loan or for debt cancellation. High-cost loans in which blanks are left to be filled in after contracts are signed are unenforceable.

CONTRACT LANGUAGE REQUIREMENTS

SECTION 408.744

Requires the lender to provide a copy of the loan in a different language if the discussions leading to the loan were in a different language.

PROHIBITED HIGH-COST LOAN CONTRACT TERMS AND PRACTICES

SECTION 408.746

High- cost loans may not contain scheduled payments which are more than twice as large as the average of the earlier scheduled payments. High-cost loans can not contain terms which require more than two periodic payments are consolidated and paid in advance from the loan proceeds. High-cost loans can not contain provisions which increase the interest rate after default. High-cost loans may not contain provisions which allow the lender to increase the indebtedness at his or her discretion. Lenders are prohibited from charging borrowers fees to modify, renew or amend high-cost loans or to defer payments under the terms of the loan. Lenders are prohibited from making high-cost loans without first receiving certification from HUD that the borrower has received loan counseling. High-cost loans may not contain mandatory arbitration clauses. Lenders are prohibited from paying home- improvement contractors from the high-cost loan unless the instrument is both payable to the borrower and contractor, or through a third-party escrow agent.

DESCRIPTION (continued)

GOOD FAITH

SECTION 408.748

Lenders who attempt to evade the high-cost loan prohibitions by structuring the loan as an open-ended account transaction or some other transaction are still subject to the act. Lenders acting in good faith who fail to comply with Section 408.719 may evade prosecution if they notify the borrower of the compliance failure and make appropriate restitution.

PENALTIES AND REMEDIES

SECTION 408.750

Lenders who violate this proposal will be liable to the borrower for actual damages, statutory damages equal to the finance charges in the agreement plus 10% of the amount financed, punitive damages for an intentional or reckless violation of the act, and reasonable attorney fees and costs.

Borrowers may be granted injunctive relief. If the lender intentionally violated this act, the loan is void rendering the lender incapable of collecting on the loan and the borrower may recover any payments under the agreement. The borrower also has the right to rescind the agreement against a party foreclosing on the loan.

UNLAWFUL TRADE PRACTICE

SECTION 408.752

Violations of this proposal are deemed to be unlawful trade practices and may be prosecuted by the Attorney General's office.

INVESTMENT PROHIBITIONS

SECTION 408.754

Lenders are prohibited from making investments which are backed by loans violating the provisions of this proposal.

DESCRIPTION (continued)

REPORTING REQUIREMENTS

SECTION 408.756; 408.758

Lenders which are exempt from federal reporting requirements because of the amount of loans they originated the proceeding year are required to report similar information to the Division of Finance. Lenders must report to the Division of Finance the average and median interest rates of mortgage loans they originate grouped by income levels, gender and racial categories. The reporting requirements become effective January 1, 2006.

SECTION 408.760

The reporting requirements of this proposal (Sections 408.756 and 408.758) shall become effective January 1, 2006.

The rest of the proposed legislation is effective January 1, 2005.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Economic Development
    Division of Finance
    Division of Credit Unions
Department of Insurance
Department of Corrections
Office of Attorney General
Office of State Courts Administrator
Office of Prosecution Services
Office of State Public Defender

Mickey Wilson

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LMD:LR:OD (12/02)

Director
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