Description of Legislation

1. Summary of Legislation

Section 1 of the bill increases the amount of property a debtor is allowed to exempt from claims of a creditor. (Where interest is defined as interest in ownership.)
The proposed increases are:

1. The debter's aggregate interest in real property used as a residence or burial plot:

   From: $7,500 To: $10,000 in value

2. The debter's aggregate interest in any property less any amount exempt in 1.

   From: $2.500 To: $3,500 in value

3. The debtors aggregate interest in one motor vehicle.

   From: $1,000 To: $1,500 in value

4. The debtor's aggregate interest in the value of household possessions, and goods held primarily for the personal, family, or household use of the debtor or their dependent is increased from $2,500 to $3,500 plus $750.00 for each dependent not to exceed $3,000 for all dependents.

5. The debtor's aggregate interest in tools of their trade or the trade of a dependent is increased from $500.00 to $750.00.

Section 2 of the bill authorizes a fee equal to the greater of 1/4 of 1% or $50.00 on the principal amount (outstanding balance) of a loan that is less than $300,000 and not secured by real property for any one of the following acts performed to the loan:

(1) modification
(2) renewal
(3) extension
(4) amendment of any terms
(5) extension of Credit

Any loan not secured by real property may be charged an origination fee equal to the greater of 1/4 of 1% or $50.00 on the balance of the loan for any act listed above in 1 through 5.

This section of the act applies to loans other than home loans, manufactured home loans and revolving credit accounts.

Section 3 of the bill applies the same fee and conditions set forth in Section 2 of the proposed legislation to the following installment loans:

1. Installment loans not in excess of $5,000.
2. Installment loans not in excess of $25,000 that are not secured by real property.

3. Installment loans not in excess of $25,000 that are secured by a first lien on a residential manufactured home.

Section 4 grants any lender the authority to levy the greater of 1/4 of 1% or $50.00 of the outstanding balance on a equity lines of credit for any of the following act performed to the loan:

(1) modification	(4) amendments of any terms
(2) renewal	(5) extension of credit
(3) extension	

Section 5 of the act establishes the following fee schedule for assumed loans secured by real property.

1. The fee shall not exceed $400.00 for mortgages or deeds of trust containing a due on sale clause.

2. The fee shall not exceed $125.00 for mortgages or deeds of trust that do not contain a due on sale clause.

3. Mortgages or deeds of trust where the original obligor is not released from liability the fee shall not exceed $125.00.

Section 5 of the act further allows a lender to charge a party to a loan an appraisal fee. The borrower is granted the right to obtain an independent third-party appraisal and requires the lender to provide the borrower with a copy of the appraisal if one is requested.

Section 6 pertains to certain revolving credit charges. Under this section of the proposed legislation the annual charge of $20.00 is increased to $24.00 and in the event the lender chooses not to impose the proposed annual charge of $24.00 a service charge may be imposed on the balance at a rate not to exceed $2.00 per month if the balance is not paid in full within 25 days from the billing date. In addition, the lender is authorized to impose a late payment charge not to exceed $5.00 for any payment past due for 30 days or more.

Section 7 pertains to finance charge rates and service charge rates for revolving charge account contracts. This section of the proposed legislation conforms the finance and service charge rates established in Section 6 to conform to revolving charge account contracts.

2. Effective Date

October 1, 1991

3. Fund or Tax Affected

General Fund. State income tax returns.

4. Principal Department/Program Affected

Department of Revenue

Cost or Revenue Impact on State

	FEE 91-92	FEE 92-93	FEE 93-94
1. Non-Recurring Costs/Revenues			
2. Recurring Costs/Revenues			

It is not clear what the net effect on State revenues will be as a result of HB 869. The impact whether positive or negative will be recurring. The effects at this time are **indeterminant**. (See "Technical Considerations/Comments," Below, p.4)

3. Fiscal/Revenue Assumptions

According to the Federal Income Tax Publication 17, 1991, "points" paid by a borrower are sometimes used to describe certain charges paid by the borrower. They are also called loan origination fees, maximum loan charges, or premium charges. If the payment of any of these charges is only for the use of money it is interest. (Origination fees and the etc. are considered interest so long as they are based on a percent of the amount borrowed.) Points considered interest paid in advanced may not be deducted in the full amount in the year paid but must be spread over the life of the loan. Points charged for specific services are not considered interest. Examples are: lender appraisal fees, fees charged in preparation of deeds of trust, settlement fees, and notary fees.

Corporations are allowed to deduct the total cost, all cost associated with acquiring property, from their State income tax returns. However, these cost are amortized over the life of the loan.

Cost/Revenue Impact on County or Local Government

	FY 91-92	FY 92-93	FY 93-94
1. Non-Recurring Costs/Revenues			
2. Recurring Costs/Revenues	NA	NA	NA
3. Fiscal/Revenue Assumptions			

Sources of Data for Fiscal Note

1991, Federal Income Tax Publication 17.
Discussions with representatives of the Department of Revenue's Income Tax Division and Tax Research.

Technical Considerations/Comments

The enactment of HB 869 will not have a direct impact on State or local revenues in the same fashion as a tax or fee bill because the bill does not change the State tax code or local revenue acts. The impact, if any, flows from the impact of higher loan fees and other charges on the behavior of lenders and borrowers and the disposition of the income from additional fees.

A determination of the indirect impact of the bill on State tax revenue within the current time frame is impossible to predict with any accurate degree of certainty. There are many ways the bill could affect revenue, and the data to verify and measure each impact does not exist.

To illustrate the issue, possible impacts are outlined below. There may be other possibilities. Please keep in mind that without data on the magnitude, it is impossible to weigh each impact (if the impact exist) to determine whether the net impact is positive or negative.

1.) Banks could increase their taxable income if they choose to utilize an increase in gross income in some form other than investing an increase in gross income in tax free government securities. This effect depends on how the industry as a whole decides to react to large increases in income.

2.) Commercial borrowers could reduce their taxable income through additional cost due to an increased cost in borrowing capital. However, they could pass the additional cost on to consumers. It is not clear how the commercial borrower will respond to an increase in the cost of borrowing and modifying loans. In the event the increased cost of capital is passed on to consumers through higher prices, the most logical assumption would be to expect consumers to consume less or put off spending entirely thus producing an adverse effect on sales tax receipts.

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