

LFC Requester:

Noah Montano

AGENCY BILL ANALYSIS
2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

Analysis@nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original Amendment
Correction Substitute

Date 01/17/25

Bill No: HB 59

Sponsor: Rep. Tara Lujan

Agency Name
and Code
Number:

Regulation & Licensing
Department - 420

Short Title: Earned Wage Access Services Act

Person Writing
Analysis:

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
N/A	N/A		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
None	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	None	\$127.2	\$127.2	\$254.4	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

House Bill 59 (HB59) proposes the establishment of the "Earned Wage Access Services Act," (EWASA) granting the Financial Institutions Division (FID) of the Regulation and Licensing Department (RLD) authority to oversee the licensing, enforcement, and examination of earned wage access (EWA) providers. The bill outlines a number of requirements for licensed EWA providers, including, but not limited to, maintaining operating capital, submitting license application information, providing consumer disclosures, undergoing annual renewals and reporting, and adhering to restrictions on fees and the use of voluntary tips or gratuities for determining eligibility. The provisions of HB59 would apply to EWA service providers that receive licenses on or after October 15, 2025.

FISCAL IMPLICATIONS

While HB59 would authorize the FID to examine licensees and mandates investigations as part of the application and renewal processes, it does not allocate funding for staffing to carry out these activities. Additionally, the bill does not contain a provision to establish a non-reverting fund to accumulate fee income for future expenses related to the new statutory responsibilities and functions assigned to the FID under the proposed Act. The FID is currently already working to expand its existing licensing staff, which may make it possible for the FID to manage the new clerical functions associated with processing initial licensing applications and renewal licensing that would result if HB59 is enacted, the FID does not currently have sufficient staff to conduct the additional examinations of licensees/facilities and conduct investigations of complaints or suspected violations that would be critical to the effective regulation of this industry. Appropriation of sufficient funding and authorization of an additional full-time equivalent (FTE) position to carry out the new duties assigned to the FID are essential to accomplish the purposes of HB59.

The fiscal impact dollar amounts provided above includes the cost of one (1) new advanced examiner and associated expenses for FY26 and FY27 to support examinations and investigations that cannot be absorbed by existing staff of the FID. Please note that the RLD has not included costs associated with the additional licensing resources that would be necessitated under HB59, as

the FID feels it would be possible to mitigate and accommodate those costs by utilizing an existing, proven, multi-state automated licensing system (outlined below) which the FID is already authorized to use for the licensing of some other financial industries in New Mexico.

Due to the uncertain volume of activity in this sector, the RLD is unable to accurately estimate the long-term fiscal impact of HB59 at this time. If there is a significant increase in the number of licensees and/or complaints, the FID may require additional appropriations and/or staffing in future years to effectively carry out the requirements of the EWASA.

SIGNIFICANT ISSUES

Section 3 (page 6, lines 11-13) of the bill states that services provided under the EWASA shall not be classified as a loan or any other form of credit or debt. However, these products share several similarities with traditional payday loans.

In November 2020, the Federal Consumer Financial Protection Bureau (CFPB) issued an advisory opinion clarifying that a specific type of earned wage product does not constitute the offering or extension of credit, as defined by the Truth in Lending Act (TILA) Regulation Z [see 12 CFR Part 1026]. According to the CFPB opinion, an earned wage product is not subject to TILA/Regulation Z if it meets all of the following conditions:

1. Consumers are provided no more than the actual amount of wages they have earned;
2. The service is provided by a third party fully integrated with the employer;
3. The only repayment involves the recovery of the amount paid, via a payroll deduction from the consumer's next paycheck, with no additional consumer payment, voluntary or otherwise;
4. No collection activity or recourse is pursued beyond the payroll deduction; and
5. No underwriting or credit reporting is involved.

Prior to issuing this opinion, the CFPB identified two (2) emerging models of earned wage products: (1) Employer-partnered; and (2) direct-to-consumer. The CFPB also found that direct-to-consumer products were not always strictly limited to the actual wages accrued. Some products restricted advances to an estimated amount below the accrued wages without considering other factors, while others used accrued wages as just one element in calculating advance amounts. Additionally, there were products that did not explicitly state that accrued wages were a factor in determining the advance, despite being marketed as earned wage products.

In July 2024, the CFPB proposed an interpretive rule regarding this issue. On January 15, 2025, the CFPB issued a new advisory opinion (<https://www.govinfo.gov/content/pkg/FR-2025-01-15/pdf/2025-00381.pdf>) rescinding its November 2020 advisory opinion. Among its findings, the CFPB concluded that:

“Some earned wage products may not be covered by the Payday Rule because of its “wage advance” and “no cost advance” exclusions. However, these exclusions can only apply to earned wage products to the extent that such products are TILA and Regulation Z credit. As a result, the CFPB’s earlier decision to exclude certain earned wage product constructs from the Payday Rule has no impact on the credit status of such products under TILA or Regulation Z.”

The January 2025 advisory opinion continued:

“Few if any of the products in the market at the time of or subsequent to issuance fit the mold outlined by the [November 2020] opinion. ...Worse still, the 2020

Advisory Opinion has been widely cited in support of legal conclusions that it did not reach. For example, it has erroneously been cited for the general propositions that no-fee earned wage products are not credit and that employer-partnered earned wage products are also not credit.”

The CFPB’s January 2025 advisory opinion may be interpreted as determining that earned wage products are, in fact, considered credit under federal law, which would contradict and supersede HB59’s provision under New Mexico state law that they are not. Considering this recent shift in federal interpretation, the FID reviewed the fees allowed under HB59 as though EWA proceeds were classified as credit under the Truth in Lending Act (TILA) and Regulation Z.

Section 12 of HB59 (page 26, lines 15-18) limits the allowable fee on EWA proceeds to \$7.50 per transaction. However, an unintended consequence of allowing a flat dollar fee is that, when calculated in accordance with the New Mexico Small Loan Act of 1955 (SLA), Section 58-15-17(J) NMSA 1978, the annual percentage rate (APR) of EWA proceeds could far exceed the 36% APR cap specified in the SLA. For example, an EWA advance on earned but unpaid income of \$1,080 for one week, with a \$7.50 transaction fee and no voluntary tip or gratuity, would result in an APR of approximately 36%. However, if the earned but unpaid income were only \$500 under the same conditions, the APR would rise to about 77.5%; at \$250, the APR would climb to approximately 154%. This structure could be considered to have a regressive, disproportionately negative impact on lower-income New Mexico residents, who are more likely to rely on EWA services.

PERFORMANCE IMPLICATIONS

Please refer to the "Administrative Implications" section (below) for details on the potential impact on performance if amendments are not made to allow for the use of the Nationwide Multi-State Licensing System (NMLS) for licensing functions under HB59. Without the requested amendments outlined below, the licensing process would either remain paper-based and manual or require the costly development of an automated system. Additionally, see the "Fiscal Implications" section (above), which discusses the potential need for additional staffing, depending on the volume of activity.

ADMINISTRATIVE IMPLICATIONS

Language in Section 5 (page 9, line 22) of HB59 stipulates that annual licenses expire on July 1, and Section 6 (page 11, lines 12-13) requires renewals to be filed on or before April 1 for the July 1 renewal date. The FID has been transitioning licensing processes to the Nationwide Multistate Licensing System and Registry (NMLS) for several years to take advantage of automation efficiencies, eliminating the manual paper renewal process, and avoiding costs to the State of New Mexico associated with other automated licensing systems. Financial regulators nationwide currently use NMLS for licensing, which also supports coordinated regulation of entities operating across state lines.

The NMLS opens its renewal season on November 1 and closes on December 31 each year, with all licenses issued through NMLS expiring on December 31 of the following year. The FID respectfully requests the addition of language authorizing the use of NMLS, or any comparable licensing system, in HB59, and recommends amending the licensing dates to align with the NMLS renewal period (November 1 to December 31) and the December 31 expiration of licenses.

Language in Section 5 (page 10, lines 2-18) includes provisions regarding required information on the license itself and mandates that it be "conspicuously posted in the provider's principal place of business and all other locations of the business in New Mexico." Additionally, lines 24-25 address "a person whose name does not specifically appear on the face of the license." However, if the FID utilizes the NMLS, paper licenses are not issued. Instead, consumers can verify licenses and associated information via the NMLS consumer access website (<https://www.nmlsconsumeraccess.org/>). The FID respectfully requests that HB59 be amended to remove the language in these sections to allow for the use of the NMLS and its consumer access website for license verification, rather than requiring physical licenses to be posted.

Additionally, Section 7 (page 15, lines 5-7) requires a licensee wishing to surrender a license to deliver the physical license to the FID director with written notice of its surrender. The FID respectfully requests that this requirement for the delivery of a physical license be removed to accommodate the use of online consumer access for license information via NMLS and the associated lack of a physical license.

Further, Section 16 (page 30, line 2) refers to "a certified copy of a license," which the FID respectfully requests be removed to align with the use of the NMLS and its online license verification system.

Finally, the provisions of HB59, as currently written, would apply to earned wage access service providers issued licenses on or after October 15, 2025. To harmonize with the use of the NMLS for licensing under this act, the FID respectfully requests that this provision be amended to apply to licenses issued on or after November 1, 2025.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

Language in Section 6 (page 11, lines 20-23) stipulates that the FID "shall" issue a renewal license to the provider if the division finds that "no valid complaints of violations or abuses" of the act or associated rules "have been filed by consumers or other persons". While it is understandable that companies with outstanding substantive issues should not be eligible for renewal, the language does not differentiate between unresolved violations and those that may have been inadvertent and later corrected. Similar language on page 13, lines 1-3 may also create the same issue. The FID respectfully requests that the sponsor consider amending the language to allow for renewal once the licensee has addressed and corrected any valid complaints to the FID's satisfaction.

Additionally, page 13, lines 4-5 requires the return of a renewal fee if complaints are well-founded and a renewal is denied. However, the FID will have already incurred expenses related to the investigation and hearing on the renewal and alleged complaints or violations. The FID respectfully requests that all fees related to applications and renewals be made non-refundable, consistent with the approach to all other fees currently assessed by the FID.

Section 7 (page 14, lines 21-23) states that, in cases of suspension necessary to protect the interests of consumers and the public, "[s]uspension of a license pursuant to this subsection shall not exceed thirty days." While the FID strives to provide timely hearings, the availability of hearing officers, facilities, and witnesses may not align with such a strict timeframe. The FID respectfully requests that the suspension period be amended to a limit of sixty (60) days to ensure that adequate time is available for hearings and necessary proceedings.

OTHER SUBSTANTIVE ISSUES

Section 4 (page 9, lines 2-5) and Section 5 (page 11, lines 3-6) stipulate requirements for cash or cash equivalents in the amount of thirty thousand dollars (\$30,000). However, the FID has determined that “tangible net worth” provides greater value to regulated entities and for consumer protection than operating cash. The FID respectfully requests that a minimum tangible net worth of at least the same amount be added to the licensee requirements for both initial and renewal application consideration.

Section 11 (page 21, lines 21-24) requires licenses to retain records for "at least two years after making the final entry on an earned wage access service transaction." To better facilitate potential investigations into money laundering, terrorist financing, or other illegal activities, the FID respectfully requests that this retention period be extended to five (5) years to align with federal retention requirements under the Bank Secrecy Act (31 USC 5311).

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Uncertainty regarding the legality and requirements for earned wage access services in New Mexico will persist. However, there will also be no potential fiscal or performance impact on the FID as a result of inaction.

AMENDMENTS

Please see language regarding requested amendments as detailed in the “Performance Implications”, “Administrative Implications”, “Technical Issues” and “Other Substantive Issues” sections (above).