

LFC Requester:

Felix Chavez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: 02/21/2025

Check all that apply:

Bill Number: HB476

Original Correction
Amendment Substitute

Sponsor: Rep. Anita Gonzales
Rep. Cristina Parajón
Rep. Art De La Cruz

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Short Title: PRICE FIXING
PROHIBITION & TAX
FAIRNESS

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

Section 1 titles the Act, the "Price Fixing Prohibition, Consumer Transparency and Tax Fairness Act."

Section 2 provides detailed definitions for terms used in the act, including "acquirer bank," "authorization," "clearance," "consumer," "interchange fee," "merchant," "payment card network," "processor," "settlement," "tax," "tax documentation," and others relevant to the electronic payment transaction process. This section defines “interchange fee” as “a fee established, charged, or received by a payment card network for the purpose of compensating the issuer for its involvement in an electronic payment transaction.” This definition along with the prohibition on collecting these fees in Section 3, may be read as conflicting with the National Banking Act.

Section 3 prohibits payment card networks and credit card issuers from fixing interchange fees, requiring merchants to accept certain credit cards, charging fees due to disputed transactions without proper findings, and penalizing merchants for lawful pricing practices.

Section 4 prohibits issuers, payment card networks, acquirer banks, or processors from charging interchange fees on tax amounts or gratuities in electronic payment transactions if the merchant provides the necessary tax or gratuity data during authorization or settlement. If data is not provided in time, merchants can submit documentation within 180 days to get refunded the interchange fees on the tax or gratuity amount.

Section 5 creates a right of action for the attorney general to seek injunctive relief and civil penalties against entities violating Sections 3 and 4. Violating entities may be issued a civil penalty of \$1,000 per electronic payment transaction and must refund merchants any unlawful interchange fees. Section 5 also makes a violation of the Act a violation of the New Mexico Unfair Practices Act.

Section 6 states that if any part of the act is found invalid, the rest of the act remains in effect for other situations or persons.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

The language in HB476 is applicable to national banks and therefore may be preempted by The National Banking Act. Federal Courts have found that “Business activities of national banks are controlled by the National Bank Act, 12 U.S.C. § 1 *et seq.*, and regulations promulgated thereunder by the Office of the Comptroller of the Currency (OCC).” *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 6 (2007). Sections 3 and 4 of HB476 may be read as constraining a national bank’s ability to collect fees from customers as enumerated in 12 C.F.R. § 7.4002. A similar issue involving the same statutory language is being litigated in federal court in the Northern District of Illinois Eastern Division, where national banks sued to prevent Illinois’s similar law from going into effect. *See Illinois Bankers Ass’n v. Raoul*, No. 24 C 7307, 2024 WL 5186840 (N.D. Ill. Dec. 20, 2024).

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

Section 5(A) of HB476 states that the Attorney General may file a lawsuit to seek injunctive relief, and if appropriate, collect a civil penalty” if the Attorney General believes a covered network card issuer or payment card network violates the Act. This right of enforcement will likely require the NMDNJ to collect and analyze consumer complaints and NMDNJ line attorneys to investigate and bring civil actions for violations under the Price Fixing Prohibition and Tax Fairness Act.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS