LFC Requester:	Felix Chavez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
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(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}

Date Prepared: 02-25-2025
Bill Number: HB 476

Check all that apply:
Original X Correction __
Amendment __ Substitute __

Sponsor: Anita Gonzales, Cristina Parajon, and Art De La Cruz

Short Title: Price Fixing Prohibition, Consumer Transparency and Tax Fairness Act

Agency Name and Code Number: Regulation & Licensing Department - 420

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
NFI	NFI		

(Parenthesis ( ) indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
NFI	($2,500.0)	($2,800.0)	Recurring	General Fund

(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	NFI	NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: National Banking Act of 1863; Home Owners Loan Act of 1933

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

House Bill 476 (HB476) would create the "Price Fixing Prohibition, Consumer Transparency and Tax Fairness Act" (PFA). The PFA would prohibit "acquirer banks", "covered credit card issuers", "payment card networks", and "processors" from: (1) price fixing interchange fees; or (2) charging or receiving an interchange fee on taxes or gratuities provided that the initiating merchant discloses the tax and/or gratuity amount as a part of the authorization or settlement process. Additionally, the PFA creates civil penalties of one thousand dollars ($1,000) per electronic payment transaction conducted in violation of the Act.

HB476 does not contain an effective date and, as a result, would go into effect June 20, 2025, if enacted.

FISCAL IMPLICATIONS

As noted in the technical issues below, the PFA would likely serve to incentivize New Mexico state-chartered banks to convert to national bank charters to avoid the prohibitively high costs of compliance or the risk of noncompliance. This shift would result in the loss of Annual Supervision Assessment Fees paid to the state, which currently bring in over two million dollars ($2,000,000) per year and increase as the asset sizes of the banks grow. Additionally, it may cause smaller state-chartered credit unions to dissolve, further impacting General Fund revenue.

SIGNIFICANT ISSUES

HB476 establishes a minimum threshold of eighty-five billion dollars ($85,000,000,000) in total assets for covered credit card issuers. This implies that HB476 is intended to apply only to the largest national bank credit card issuers. However, language in the bill also covers transactions conducted by "debit card" and does not appear to set a similar minimum threshold for debit card issuers. Nearly every depository institution, bank and credit union, operating in New Mexico offers debit cards for their customers. Most bank and credit union debit card programs are processed by third party transaction providers and debit card transaction activity far exceeds credit card transaction activity at New Mexico financial institutions. The Financial Institutions Division (FID) of the New Mexico Regulation and Licensing Department (RLD) assumes that all debit card issuers would be subject to the provisions of Section 4 of HB476, regardless of size.

HB476 does not provide a safe harbor for acquirer institutions if issuers, networks, or processors violate the PFA, which could lead the acquirer institutions to unknowingly breach its provisions. This issue extends to any entity involved in a transaction that might not be aware, or could not reasonably be aware, that another party is violating the PFA. Civil penalties should therefore be limited to the specific entity responsible for the violation, rather than being imposed on all parties involved in the electronic payment transaction.

Additionally, the PFA lacks penalties for merchants in cases of fraud. Without proper oversight, merchants could have incentives to exploit the system, such as inflating "gratuities" beyond the

actual amounts contributed. Some merchants might even reduce their official prices and "encourage" customers to make large "voluntary" gratuity payments, thereby not only avoiding interchange fees but also reducing the gross receipts tax paid to the state. In addition to outright fraud, unintentional errors in transaction recording could lead to under- or overpayment of refunds.

Financial institutions also cannot know in advance the exact proportion of interchange fees that will be refunded. This uncertainty could create significant accounting challenges and conflict with federal financial institution accounting regulations. If many merchants opt for the refund route, since the at-the-time-of-sale route would likely take a significant period to implement if even possible, it could create a substantial contingent liability for issuing financial institutions, which might not materialize until six months or more after the transaction. This could result in instability within the financial market for banks or credit unions attempting to comply with the PFA.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with the National Banking Act of 1863 and the Home Owners' Loan Act of 1933. See "Technical Issues" section, below, for current challenges to similar legislation in Illinois (including case citation).

TECHNICAL ISSUES

It is uncertain whether current processors or covered issuers have the system capabilities to implement these changes for New Mexico-based transactions. If they do not, significant technical modifications would be needed to systems that handle millions of transactions daily. Additionally, the requirement to disclose interchange fees to consumers, when the merchant is the entity paying these fees to processors, issuers, or acquiring institutions raises questions. It is unclear why consumers would need this information, as interchange fees typically do not affect them – the price they pay is generally unrelated to the fees. Implementing this change would likely necessitate extensive reprogramming of financial institution and processor core processing platforms, further complicating the process. The feasibility of enacting these technical changes remains uncertain.

These technical changes would likely be prohibitively expensive to implement. Illinois, the only state to pass a similar law, is already facing challenges related to federal preemption. Specifically, there are questions about the law's applicability to federal banks and out-of-state state-chartered banks (but not credit unions). In fact, a federal judge has issued a preliminary injunction that blocks enforcement of the Illinois Interchange Fee Prohibition Act (*Illinois Bankers Association v. Raoul*, No. 24 C 7307, Dec. 20, 2024). Additionally, SB1798 was introduced in the Illinois legislature on February 5, 2025, proposing the repeal of the Illinois Interchange Fee Prohibition Act effective immediately upon becoming law.

If HB495 were to pass, New Mexico state-chartered banks and credit unions could face prohibitively high costs to comply—costs that other banks operating in the state would not incur. These institutions also might struggle to make the necessary changes through the core processors they depend on, as there are only a few companies nationwide that provide these services. If enacted, the PFA could incentivize New Mexico state-chartered banks to either convert to national banks or be acquired by larger national banks in order to avoid the high costs of compliance or the

risk of noncompliance. In general, national banks do not maintain a presence in small, rural communities. Additionally, the PFA could disproportionately impact credit unions as the Illinois judge has determined that credit unions are not exempt, regardless of national or state chartering. This would be particularly true for small, rural credit unions that may serve as the sole financial service providers in those areas. These credit unions may be too small to even attempt compliance, and if they are forced to dissolve, it could expand the "banking deserts" in rural New Mexico, causing devastating effects for affected communities.

Proponents of interchange-fee exclusions for taxes and similar items argue that merchants will pass the savings on to consumers. However, experience with past interchange fee regulations, including the Durbin amendment's price controls under the Dodd-Frank Act of 2010, suggests that any such passthrough would likely be minimal, at best. Most merchants will see little or no reduction in total costs, and some may even experience cost increases due to new technological requirements and expanded record keeping obligations. Therefore, it is implausible to expect significant price reductions for consumers. Furthermore, some merchants may encourage consumers to use account-to-account or person-to-person payment methods, which are not subject to interchange fees but offer minimal consumer protections, such as fraud detection, chargeback capabilities, and other safeguards compared to debit and credit cards. Consequently, consumers may face higher costs in this scenario, rather than any meaningful reduction.

OTHER SUBSTANTIVE ISSUES

HB476 defines "covered credit card issuer" as including "any affiliates"; however, "affiliates" is not defined in the PFA, and it is unclear whether this would include affiliation by contract between an acquirer institution and an issuer to supply services to the acquirer's customers. "Affiliates" should be clearly defined to clear up this potentially confusing definition of issuers and their affiliates.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Maintaining the status quo would ensure stability in the financial markets and preserve over $2 million in annual revenue for the New Mexico state General Fund.

AMENDMENTS

The term "affiliates" should be clearly defined to avoid confusion regarding the definition of issuers and their affiliates. Civil penalties should be imposed only on the specific entity responsible for the violation, rather than on all parties involved in the electronic payment transaction. See the "Significant and Technical Issues" section above for additional considerations regarding other potentially necessary amendments.