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HOUSE BILL 59

**57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

INTRODUCED BY

Micaela Lara Cadena and Tara L. Lujan

AN ACT

RELATING TO WAGE ACCESS; ENACTING THE EARNED WAGE ACCESS SERVICES ACT; PROVIDING POWERS AND DUTIES OF THE FINANCIAL INSTITUTIONS DIVISION OF THE REGULATION AND LICENSING DEPARTMENT; PROVIDING FOR LICENSURE OF EARNED WAGE ACCESS SERVICES PROVIDERS; PROVIDING FOR DENIAL, SUSPENSION OR REVOCATION OF LICENSES; PROVIDING FOR HEARINGS AND APPEALS; REQUIRING EXAMINATIONS AND INVESTIGATIONS; SETTING CONDITIONS AND RESTRICTIONS; PROVIDING EXEMPTIONS FROM THE ACT; GRANTING EXCLUSIVE JURISDICTION TO THE STATE; REQUIRING ANNUAL REPORTS; PRESCRIBING A PENALTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new Section 58-34-1 NMSA 1978 is enacted to read:

"58-34-1. [NEW MATERIAL] SHORT TITLE.--Chapter 58,

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1 Article 34 NMSA 1978 may be cited as the "Earned Wage Access  
2 Services Act".

3 SECTION 2. A new Section 58-34-2 NMSA 1978 is enacted to  
4 read:

5 "58-34-2. [NEW MATERIAL] DEFINITIONS.--As used in the  
6 Earned Wage Access Services Act:

7 A. "applicant" means a person who applies for a  
8 license;

9 B. "consumer" means a person who resides in New  
10 Mexico;

11 C. "consumer-directed wage access services" means  
12 delivering to a consumer access to earned but unpaid income  
13 that is based on the consumer's representations and the  
14 provider's reasonable determination of the worker's earned but  
15 unpaid income;

16 D. "division" means the financial institutions  
17 division of the regulation and licensing department;

18 E. "director" means the director of the division;

19 F. "earned but unpaid income" means salary, wages,  
20 compensation or other income that a consumer or an employer has  
21 represented, and a provider has reasonably determined, has been  
22 earned or accrued to the benefit of the consumer in exchange  
23 for the consumer's provision of services to the employer or on  
24 behalf of the employer, including on an hourly, project-based,  
25 piecework or other basis and including circumstances in which

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1 the consumer is acting as an independent contractor of the  
2 employer but has not, at the time of the payment of proceeds,  
3 been paid to the consumer by the employer;

4 G. "earned wage access services" means providing  
5 consumer-directed wage access services or employer-integrated  
6 wage access services or both;

7 H. "employer" means a person who employs a consumer  
8 or is contractually obligated to pay a consumer earned but  
9 unpaid income in exchange for the consumer's provision of  
10 services to the employer or on behalf of the employer,  
11 including on an hourly, project-based, piecework or other basis  
12 and including circumstances in which the consumer is acting as  
13 an independent contractor with respect to the employer;

14 I. "employer" does not mean a customer of an  
15 employer or any other person whose obligation to make a payment  
16 of salary, wages, compensation or other income to a consumer is  
17 not based on the provision of services by that consumer for or  
18 on behalf of the person;

19 J. "employer-integrated wage access services" means  
20 delivering access to an advance of earned but unpaid income to  
21 a consumer that is based on employment, income or attendance  
22 data obtained directly or indirectly from an employer or an  
23 employer's payroll service provider;

24 K. "fee" means:

25 (1) a fee imposed by a provider for delivery

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1 or expedited delivery of proceeds to a consumer; or

2 (2) a subscription or membership fee imposed  
3 by a provider for a bona fide group of services that include  
4 earned wage access services;

5 L. "fee" does not include a voluntary tip, gratuity  
6 or other donation;

7 M. "license" means a permit issued under the  
8 authority of the Earned Wage Access Services Act to engage in  
9 business as an earned wage access services provider and collect  
10 charges therefor strictly in accordance with the provisions of  
11 that act. It shall constitute and shall be construed as a  
12 grant of a revocable privilege only to be held and enjoyed  
13 subject to all the conditions, restrictions and limitations  
14 contained in that act and lawful rules promulgated by the  
15 director and not otherwise;

16 N. "licensee" means a person to whom one or more  
17 licenses have been issued pursuant to the Earned Wage Access  
18 Services Act upon the person's written application electing to  
19 become a licensee and consenting to exercise the privilege of a  
20 licensee solely in conformity with that act and the lawful  
21 rules promulgated by the director under that act and whose name  
22 appears on the face of the license;

23 O. "outstanding proceeds" means proceeds remitted  
24 to a consumer by a provider that have not yet been repaid to  
25 the provider;

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1 P. "person" means an individual, copartner,  
2 association, trust, corporation and any other legal entity;

3 Q. "proceeds" means a payment to a consumer by a  
4 provider that is based on earned but unpaid income; and

5 R. "provider" or "earned wage access services  
6 provider" means a person that is in the business of providing  
7 earned wage access services to consumers; provided that  
8 "provider" or "earned wage access services provider" does not  
9 include:

10 (1) a service provider, such as a payroll  
11 service provider, whose role may include verifying the  
12 available earnings but is not contractually obligated to fund  
13 any proceeds delivered as part of an earned wage access  
14 service; or

15 (2) an employer that offers a portion of  
16 salary, wages or compensation directly to its employees or  
17 independent contractors before the normally scheduled pay  
18 date."

19 SECTION 3. A new Section 58-34-3 NMSA 1978 is enacted to  
20 read:

21 "58-34-3. [NEW MATERIAL] EARNED WAGE ACCESS SERVICES  
22 PROVIDER--LICENSE REQUIRED--EXCEPTIONS.--

23 A. A person shall not engage in business as a  
24 provider in this state without first having obtained a license  
25 from the division.

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1           B. A banking corporation, savings and loan  
2 association or credit union operating under the laws of the  
3 United States or of a state is exempt from the licensing  
4 requirements of the Earned Wage Access Services Act.

5           C. Earned wage access services offered and provided  
6 by a licensee under the provisions of the Earned Wage Access  
7 Services Act shall not be considered:

8                   (1) in violation of or noncompliance with laws  
9 governing deductions from wages or the purchase, sale or  
10 assignment of, or an order for, earned but unpaid income;

11                   (2) a loan or other form of credit or debt,  
12 nor shall the provider be considered a creditor, debt collector  
13 or lender with respect thereto; or

14                   (3) money transmission, nor shall the provider  
15 be considered a money transmitter with respect thereto."

16           SECTION 4. A new Section 58-34-4 NMSA 1978 is enacted to  
17 read:

18           "58-34-4. [NEW MATERIAL] PROVIDER LICENSE--APPLICATION  
19 FOR ORIGINAL LICENSE--DIVISION POWERS AND DUTIES.--

20           A. Application for an original license shall be in  
21 a form and manner prescribed by the division and shall include:

22                   (1) the address of the applicant's principal  
23 place of business within or without New Mexico and whether the  
24 business will be conducted online or in-person;

25                   (2) if applicable, the physical location and

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1 mailing address where the business is to be conducted in New  
2 Mexico;

3 (3) identification of all parties in interest  
4 and the names and addresses of all partners, officers and  
5 directors as this will provide the basis for an investigation  
6 and findings required by the provisions of this section;

7 (4) the name of a New Mexico resident who  
8 serves as the provider's agent for service of process; provided  
9 that if the provider's agent changes, the provider shall notify  
10 the division within five working days of the change; and

11 (5) such other relevant information as the  
12 division requires.

13 B. An application fee for original licensure shall  
14 be submitted with the application.

15 C. Upon the filing of an application, the division  
16 shall investigate the facts concerning the application and the  
17 requirements of the Earned Wage Access Services Act. The  
18 division may request additional information that is relevant or  
19 helpful in conducting the application investigation. Upon  
20 service of a written notice of a request for additional  
21 information, the applicant has twenty days to provide the  
22 information unless the division grants a request for a time  
23 extension. The applicant shall furnish in writing, under oath,  
24 to the director all additional information required by the  
25 director that may be relevant or, in the opinion of the

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1 director, helpful in conducting the investigation.

2 D. Failure to comply with the division's  
3 requirement for supplemental information or the willful  
4 furnishing of false information is sufficient grounds for  
5 denial of a license.

6 E. The division shall grant or deny each  
7 application for an original license within sixty days from the  
8 filing of the application with the required information and  
9 fees, unless the period is extended by written agreement  
10 between the applicant and the director.

11 F. After investigation, the division shall grant a  
12 license if it finds that:

13 (1) the financial responsibility, character  
14 and general fitness of the applicant for an original license,  
15 including the individual members and beneficiaries of the  
16 license if the applicant is a copartnership, association or  
17 trust and including the individual officers and directors of  
18 the applicant if the applicant is a corporation, are such as to  
19 command the confidence of the public and to warrant belief that  
20 the business will be operated lawfully, honestly, fairly and  
21 efficiently within the declared purposes and spirit of the  
22 Earned Wage Access Services Act;

23 (2) allowing the applicant to engage in  
24 business promotes the convenience and advantage of the  
25 community in which the business of the applicant is to be

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1 conducted; and

2 (3) the applicant has available for operation  
3 of the business cash or its equivalent in convertible  
4 securities or receivables of thirty thousand dollars (\$30,000)  
5 or any combination of securities and receivables.

6 G. If the division does not make the findings  
7 enumerated in Subsection F of this section, the division shall  
8 deny the application, notify the applicant of the denial and  
9 retain the application fee. Within thirty days after the  
10 denial of licensure, the division shall prepare written  
11 investigatory findings as to the reason for denying the license  
12 and deliver a copy to the applicant. If licensure is denied,  
13 the applicant may request a hearing as provided in the Uniform  
14 Licensing Act.

15 H. The denial of a license after a hearing is a  
16 final agency action and may be appealed as provided by Section  
17 39-3-1.1 NMSA 1978."

18 SECTION 5. A new Section 58-34-5 NMSA 1978 is enacted to  
19 read:

20 "58-34-5. [NEW MATERIAL] LICENSE INFORMATION.--

21 A. Each license issued pursuant to the Earned Wage  
22 Access Services Act is an annual license that expires on July 1  
23 following the issuance of the license unless renewed upon  
24 application or suspended or revoked or unless the provider  
25 surrenders the license when closing a location or provider's

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1 business.

2 B. Each license shall state:

3 (1) fully the name of the provider if an  
4 individual; the name, date and place of incorporation if a  
5 corporation or similar organization; and the names of all  
6 copartners and all members and beneficiaries if a  
7 copartnership, trust, association or similar organization; and  
8 any trade name approved by the division under which the  
9 provider is conducting business;

10 (2) whether the provider's business is  
11 conducted online, in-person or a combination of online and in-  
12 person; and

13 (3) the address of the provider's principal  
14 place of business within or without New Mexico and each  
15 physical location in New Mexico.

16 C. The license shall be conspicuously posted in the  
17 provider's principal place of business and all other locations  
18 of the business in New Mexico.

19 D. If a provider changes its principal place of  
20 business or business location in New Mexico, it shall give  
21 written notice of the change to the division within fifteen  
22 days of the change.

23 E. Except as a stockholder in a corporation  
24 licensed as a provider, a person whose name does not  
25 specifically appear on the face of the license shall not have

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1 or hold any interest, direct or indirect, in any license or  
2 provider and shall not be deemed a licensee or a provider.

3 F. Every provider shall maintain at all times cash  
4 or its equivalent, convertible securities or receivables, or  
5 any combination of these, of at least thirty thousand dollars  
6 (\$30,000)."

7 SECTION 6. A new Section 58-34-6 NMSA 1978 is enacted to  
8 read:

9 "58-34-6. [NEW MATERIAL] LICENSE RENEWAL--DENIAL--  
10 HEARING.--

11 A. A written application for license renewal shall  
12 be filed with the division on or before April 1 of each year  
13 for the annual renewal date of July 1. The application shall  
14 be in a form and manner required by the division.

15 B. The division shall investigate the facts and  
16 review the files of examinations of the provider made by the  
17 division and complaints filed by consumers or other persons, if  
18 any. The division shall issue a renewal license to the  
19 provider if the division finds that:

20 (1) no valid complaints of violations or  
21 abuses of the Earned Wage Access Services Act or of rules  
22 promulgated in accordance with that act have been filed by  
23 consumers or other persons;

24 (2) examinations, if any, of the affairs of  
25 the provider indicate that the business has been conducted and

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1 operated lawfully and efficiently within the declared purposes  
2 and spirit of that act; and

3 (3) the financial responsibility, experience  
4 and general fitness and character of the provider remain such  
5 as to command the confidence of the public and to warrant the  
6 belief that the business will continue to be operated lawfully  
7 and efficiently within the purposes and spirit of that act.

8 C. If the division finds that the provider does not  
9 meet the qualifications for a renewal license enumerated in  
10 Subsection A of this section and other provisions of the Earned  
11 Wage Access Services Act, the director may grant a temporary  
12 extension of the license not exceeding sixty days pending a  
13 hearing. The division shall set a date for hearing on the  
14 license renewal and shall notify the provider. The notice  
15 shall specify the particular complaints, violations or abuses  
16 or other reasons for the division's contemplated refusal to  
17 renew the license.

18 D. At the hearing, the attorney or other agent of  
19 the division shall produce evidence to establish the truth of  
20 the charges in complaints of violations, abuses or other  
21 grounds specified in the notice, and the provider shall be  
22 accorded the right to produce evidence or other matters of  
23 defense. If, after the hearing, the director finds that the  
24 complaints of violations, abuses or other grounds specified in  
25 the notice are not well-founded, the division shall issue the

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1 renewal license. If the director finds that the complaints of  
2 violations, abuses or other grounds are well-founded, the  
3 director shall deny the renewal application, notify the  
4 provider of the denial and return the renewal fee tendered with  
5 the application. Within thirty days after the denial of  
6 renewal, the division shall prepare written findings and shall  
7 deliver a copy of the findings to the provider. The denial of  
8 renewal is a final agency action and may be appealed as  
9 provided by Section 39-3-1.1 NMSA 1978. The court in its  
10 discretion and upon proper showing may order a temporary  
11 extension of the license pending disposition of the appeal."

12 SECTION 7. A new Section 58-34-7 NMSA 1978 is enacted to  
13 read:

14 "58-34-7. [NEW MATERIAL] LICENSE SUSPENSION OR  
15 REVOCATION.--

16 A. The division may suspend or revoke a license for  
17 cause. Prior to suspension or revocation, the division shall  
18 give written notice by registered mail that states in general  
19 the grounds for suspension or revocation and the time and place  
20 of a public hearing, which shall be held not less than fifteen  
21 days after the returned receipt of mail delivery. The hearing  
22 shall be conducted in the same manner as hearings for license  
23 denial.

24 B. After a hearing, the division shall suspend or  
25 revoke a license if the director finds that:

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1 (1) the provider has violated a provision of  
2 the Earned Wage Access Services Act or a rule promulgated in  
3 accordance with that act, either knowingly or without the  
4 exercise of due care to prevent a violation; or

5 (2) facts or conditions existed at the time of  
6 the proposed suspension or revocation that, if they had existed  
7 at the time of the original application or renewal of the  
8 license, clearly would have justified the director in refusing  
9 originally to issue the license or later to renew the license.

10 C. The division may suspend a license during a  
11 revocation case if the director finds that, based on  
12 preliminary evidence, suspension of the license is necessary to  
13 protect the interests of consumers and the public. Upon notice  
14 of the division's contemplated action to suspend the license,  
15 the provider may request a hearing within three days after  
16 notice has been received by registered mail. If the director  
17 finds that probable cause for revocation of a license exists  
18 and that enforcement of the Earned Wage Access Services Act  
19 requires immediate suspension of the license pending  
20 investigation, the director may, upon three days' notice by  
21 registered mail and a hearing, suspend the license. Suspension  
22 of a license pursuant to this subsection shall not exceed  
23 thirty days.

24 D. Whenever the director suspends or revokes a  
25 license issued pursuant to the Earned Wage Access Services Act,

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1 the director shall enter an order to that effect and  
2 immediately notify the licensee in writing by registered mail  
3 of the suspension or revocation, which notice shall state the  
4 grounds for the action.

5 E. A provider shall surrender a license by  
6 delivering it to the director with written notice of its  
7 surrender, but such surrender shall not affect any civil or  
8 criminal liability for acts committed prior to surrender.

9 F. Suspension or revocation of a license shall not  
10 impair or affect the obligation of a preexisting lawful  
11 contract between the provider and an obligor.

12 G. The division may reinstate a suspended license  
13 or issue a new license to the provider whose license has been  
14 revoked if facts or conditions that existed at the time of  
15 suspension or revocation have been corrected.

16 H. False or misleading information willfully and  
17 intentionally furnished to the division prior to the issuance  
18 of a renewal license is grounds for denial of renewal or  
19 suspension or revocation of a license."

20 SECTION 8. A new Section 58-34-8 NMSA 1978 is enacted to  
21 read:

22 "58-34-8. [NEW MATERIAL] SERVICE OF NOTICE.--When in the  
23 Earned Wage Access Services Act provision is made for service  
24 of notice by registered mail, such service is deemed complete  
25 upon receipt of the notice by the intended recipient. For the

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1 purposes of this section, mailing of notice shall be addressed  
2 to the person designated as the agent for service of process or  
3 the manager or person in charge of the licensed office, if  
4 applicable."

5 SECTION 9. A new Section 58-34-9 NMSA 1978 is enacted to  
6 read:

7 "58-34-9. [NEW MATERIAL] FEES.--The following fees shall  
8 be collected and deposited into the division's suspense account  
9 as provided in Section 9-16-14 NMSA 1978:

10 A. application fee, not to exceed one thousand  
11 dollars (\$1,000);

12 B. original and annual renewal license fee, not to  
13 exceed five hundred dollars (\$500);

14 C. late renewal fee, ten dollars (\$10.00) per day  
15 for each day the provider fails to file the license renewal  
16 application; and

17 D. annual examination fee, not to exceed two  
18 hundred dollars (\$200)."

19 SECTION 10. A new Section 58-34-10 NMSA 1978 is enacted  
20 to read:

21 "58-34-10. [NEW MATERIAL] INVESTIGATIONS--EXAMINATION OF  
22 BOOKS, RECORDS AND OTHER INFORMATION--ENTRY TO PREMISES.--

23 A. To discover violations of the Earned Wage Access  
24 Services Act or to secure information lawfully required under  
25 that act, the division may investigate the provider's business

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1 and may examine the books, papers, records, accounts, written  
2 instruments and documents used in the business and including  
3 income tax returns or other reports filed with the taxation and  
4 revenue department of:

5 (1) a provider;

6 (2) a person participating in the provider's  
7 business as principal, agent, broker or otherwise; and

8 (3) a person whom the division has reasonable  
9 cause to believe is violating a provision of the Earned Wage  
10 Access Services Act, whether the person claims to be within the  
11 authority or beyond the scope of that act.

12 B. To facilitate examinations and investigations by  
13 the division and fully disclose the operations and methods of  
14 operation of each provider's conduct in New Mexico, the  
15 provider shall keep on file as part of the records of the  
16 provider all office manuals, communications or directives  
17 containing statements of earned wage access services policies  
18 to managers and employees.

19 C. The division shall be given free access to the  
20 transactions, books, papers, records, accounts, written  
21 instruments and documents of the provider insofar as they  
22 pertain to the business licensed pursuant to the Earned Wage  
23 Access Services Act and has authority to require the attendance  
24 of any person and to examine the person under oath relative to  
25 earned wage access services or to the subject matter of any

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1 examination, investigation or hearing as provided in that act.  
2 Notices to appear before the director for examination under  
3 oath may be served by registered mail. If the party notified  
4 to appear is the provider, any person named on the face of the  
5 license being investigated or an agent, employee or manager of  
6 the provider or person and the party fails to appear for  
7 examination or refuses to answer questions submitted, the  
8 director may, forthwith and without further notice to the  
9 provider, suspend the license involved pending compliance with  
10 the notice. Upon failure of another person to appear or to  
11 answer questions, the director may apply to the district court  
12 to compel the attendance and testimony of the person and the  
13 production of books, papers, records, accounts, written  
14 instruments and documents relating to the business of the  
15 licensee. The district court may punish the person for  
16 contempt of court in a case of refusal to obey an order of the  
17 district court issued to compel the attendance of the person or  
18 the production of books, papers, records, accounts, written  
19 instruments and documents.

20 D. Within a reasonable time after the completion of  
21 an examination of a provider, the division shall mail to the  
22 provider a copy of the report of the examination, together with  
23 any comments, exceptions, objections or criticisms concerning  
24 the conduct of the provider.

25 E. For the purposes of this section, a person who

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1     advertises, solicits or makes any representation as being  
2     willing to engage in business as a provider, except persons or  
3     financial institutions expressly excluded from the definition  
4     of a provider pursuant to Section 58-34-2 NMSA 1978 or  
5     expressly exempted pursuant to Section 58-34-3 NMSA 1978, is  
6     presumed to be engaged in the business of a provider and shall  
7     be subject to investigation pursuant to this section.

8             F. The division shall prescribe rules of procedure  
9     for all hearings, examinations or investigations provided for  
10    in the Earned Wage Access Services Act. The division is not  
11    bound by the usual common law or statutory rules of evidence or  
12    by any technical or formal rules of procedure or pleading and  
13    specification of charges other than as specifically provided in  
14    the Earned Wage Access Services Act but may conduct hearings,  
15    examinations and investigations in the manner best calculated  
16    to ascertain the substantial rights of interested parties.

17            G. The division has the power to administer oaths,  
18    certify official acts and records of the division, issue  
19    subpoenas for witnesses in the name of and under the seal of  
20    the division and compel the production of papers, books,  
21    accounts, records, written instruments and documents. The  
22    division shall issue subpoenas at the instance of a party to a  
23    hearing before the division upon payment of a fee of two  
24    dollars fifty cents (\$2.50) for each subpoena so issued.

25            H. Depositions may be taken with or without a

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1 commission, and written interrogatories may be submitted in the  
2 same manner and on the same grounds provided by law for the  
3 taking of depositions or submission of written interrogatories  
4 in civil actions pending in the district courts.

5 I. Each witness who appears before the division by  
6 the director's order shall receive the fees and mileage  
7 provided for witnesses in civil actions in the district court.  
8 Fees and mileage shall be paid by the state, but no witness  
9 subpoenaed at the instance of parties other than the director  
10 is entitled to compensation from the state for attendance or  
11 mileage unless the director certifies that the witness's  
12 testimony is material.

13 J. Whenever the division has reasonable cause to  
14 believe that a person is violating a provision of the Earned  
15 Wage Access Services Act, the director may, in addition to all  
16 other actions provided for in that act and without prejudice,  
17 enter an order requiring the person to desist or to refrain  
18 from the violation. An action may be brought on the relation  
19 of the attorney general and the division to enjoin the person  
20 from engaging in or continuing the violation or from doing any  
21 act in furtherance of the violation. In such action, an order  
22 or judgment may be entered awarding a preliminary or final  
23 injunction as may be deemed proper. In addition to all other  
24 means provided by law for the enforcement of a temporary  
25 restraining order, temporary injunction or final injunction,

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1 the court in which such action is brought shall have power and  
2 jurisdiction to impound and to appoint a receiver for the  
3 property and business of the defendants, including books,  
4 papers, accounts, records, written instruments and documents  
5 pertaining to the property and business or so much as the court  
6 deems reasonably necessary to prevent further violations of  
7 that act through or by means of the use of the property and  
8 business. The receiver, when appointed and qualified, shall  
9 have powers and duties as to custody, collection,  
10 administration, winding up and liquidation of the property and  
11 business as are from time to time conferred upon the receiver  
12 by the court."

13 SECTION 11. A new Section 58-34-11 NMSA 1978 is enacted  
14 to read:

15 "58-34-11. [NEW MATERIAL] RECORDS RETENTION.--

16 A. Each provider shall keep and use in the business  
17 such books, accounts and records in accordance with sound  
18 accounting practices that enable the division to determine  
19 whether the provider is complying with the provisions of the  
20 Earned Wage Access Services Act and with the rules promulgated  
21 in accordance with that act and orders of the director. Each  
22 provider shall preserve the books, accounts and records for at  
23 least two years after making the final entry on an earned wage  
24 access service transaction.

25 B. At the time a license is in effect, the division

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1 may, upon written notice, require a provider to furnish within  
2 twenty days in writing, and under oath if so specified by any  
3 written notice issued and served by the director upon the  
4 provider, additional information as to ownership; operations;  
5 books, papers, accounts, records, written instruments and  
6 documents; and affiliation or relationship with any other  
7 person as may be helpful in the discharge of the division's  
8 duties.

9 C. False or misleading information willfully  
10 furnished to the director by a provider in an annual report or  
11 pursuant to a notice or requirement of the director is  
12 sufficient grounds for suspension and revocation of the  
13 provider's license."

14 SECTION 12. A new Section 58-34-12 NMSA 1978 is enacted  
15 to read:

16 "58-34-12. [NEW MATERIAL] PROVIDER DUTIES--TIPS,  
17 GRATUITIES OR OTHER DONATIONS.--

18 A. A provider shall do all of the following:  
19 (1) develop and implement policies and  
20 procedures to respond to questions raised by consumers and  
21 address complaints from consumers in an expedient manner;  
22 (2) when offering a consumer the option to  
23 receive proceeds for a fee, offer to the consumer at least one  
24 reasonable option to obtain proceeds at no cost to the consumer  
25 and clearly explain how to elect that no-cost option;

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1 (3) before entering into an agreement with a  
2 consumer for the provision of earned wage access services, do  
3 all of the following:

4 (a) inform the consumer of the  
5 consumer's rights under the agreement; and

6 (b) fully and clearly disclose all fees  
7 associated with the earned wage access services;

8 (4) inform the consumer of any material  
9 changes to the terms and conditions of the earned wage access  
10 services before implementing those changes for that consumer;

11 (5) allow the consumer to cancel use of the  
12 provider's earned wage access services at any time, without  
13 incurring a cancellation fee imposed by the provider;

14 (6) comply with all applicable federal, state  
15 and local privacy and information security laws or ordinances;

16 (7) if a provider solicits, charges or  
17 receives a tip, gratuity or other donation from a consumer, the  
18 provider shall do all of the following:

19 (a) clearly and conspicuously disclose  
20 to the consumer immediately prior to each transaction that a  
21 tip, gratuity or other donation amount may be zero and is  
22 voluntary; and

23 (b) clearly and conspicuously disclose  
24 in its service contract with the consumer and elsewhere that  
25 tips, gratuities or donations are voluntary and that the

1 offering of earned wage access services, including the amount  
2 of proceeds a consumer is eligible to request and the frequency  
3 with which proceeds are provided to a consumer, is not  
4 contingent on whether the consumer pays any tip, gratuity or  
5 donation or on the size of the tip, gratuity or donation;

6 (8) provide proceeds to a consumer by the  
7 means mutually agreed upon by the consumer and the provider;  
8 and

9 (9) if the provider will seek repayment of  
10 outstanding proceeds or payment of fees or other amounts owed,  
11 including voluntary tips, gratuities or donations from a  
12 consumer's account at a depository institution, including by  
13 means of electronic fund transfer, the provider shall do all of  
14 the following:

15 (a) comply with applicable provisions of  
16 the federal Electronic Fund Transfer Act and regulations  
17 promulgated pursuant to that act; and

18 (b) reimburse the consumer for the full  
19 amount of an overdraft or nonsufficient funds fees imposed on a  
20 consumer by the consumer's depository institution that were  
21 caused by the provider attempting to seek payment of  
22 outstanding proceeds, fees or other payments, including  
23 voluntary tips, gratuities or other donations, on a date  
24 before, or in an incorrect amount from, the date or amount  
25 disclosed to the consumer; provided, however, the provider is



1 not subject to the requirements of this paragraph with respect  
2 to payments of outstanding proceeds or fees incurred by a  
3 consumer through fraudulent or other unlawful means.

4 B. A provider shall not do any of the following:

5 (1) share with an employer a portion of any  
6 fees, voluntary tips, gratuities or other donations that were  
7 received from or charged to a consumer for earned wage access  
8 services;

9 (2) require a consumer's credit report or a  
10 credit score provided or issued by a consumer reporting agency  
11 to determine a consumer's eligibility for earned wage access  
12 services;

13 (3) accept payment of outstanding proceeds,  
14 fees, voluntary tips, gratuities or other donations from a  
15 consumer by means of a credit card or charge card;

16 (4) charge a consumer a late fee, deferral  
17 fee, interest or any other penalty or charge for failure to pay  
18 outstanding proceeds, fees, voluntary tips, gratuities or other  
19 donations;

20 (5) report to a consumer reporting agency or  
21 debt collector any information about the consumer regarding the  
22 inability of the provider to be repaid outstanding proceeds,  
23 fees, voluntary tips, gratuities or other donations;

24 (6) compel or attempt to compel payment by a  
25 consumer of outstanding proceeds, fees, voluntary tips,

1 gratuities or other donations to the provider through any of  
2 the following means:

3 (a) a suit against the consumer in a  
4 court of competent jurisdiction;

5 (b) use of a third party to pursue  
6 collection from the consumer on the provider's behalf; and

7 (c) sale of outstanding proceeds, fees,  
8 voluntary tips, gratuities or other donations to a third-party  
9 collector or debt buyer for collection from a consumer;

10 (7) if the provider solicits, charges or  
11 receives tips, gratuities or other donations from a consumer,  
12 mislead or deceive a consumer about the voluntary nature of the  
13 tips, gratuities or other donations or represent that they will  
14 benefit any specific persons or group of persons; and

15 (8) charge and receive a fee in excess of  
16 seven dollars fifty cents (\$7.50) per transaction in connection  
17 with a fee described in Subsection K of Section 58-34-2 NMSA  
18 1978.

19 C. The limitations set forth in Paragraph (6) of  
20 Subsection B of this section do not preclude the use by a  
21 provider of any of the methods specified in that paragraph to  
22 compel payment of outstanding proceeds or fees incurred by a  
23 consumer through fraudulent or other unlawful means, nor do  
24 they preclude a provider from pursuing an employer for breach  
25 of its contractual obligations to the provider.

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1           D. A provider may use the mailing address or state  
2 of residence provided to the provider by a person to determine  
3 the person's state of residence for purposes of the Earned Wage  
4 Access Services Act."

5           SECTION 13. A new Section 58-34-13 NMSA 1978 is enacted  
6 to read:

7           "58-34-13. [NEW MATERIAL] ANNUAL REPORTS.--

8           A. Providers shall file with the division each year  
9 reports containing at least the following information for the  
10 preceding calendar year ending March 31 in an aggregated,  
11 nonidentifying consumer manner as specified below:

- 12                       (1) gross revenue attributable to its earned  
13 wage access services;
- 14                       (2) the total number of transactions in which  
15 the provider provided proceeds to consumers;
- 16                       (3) the total number of unique consumers to  
17 whom the provider provided proceeds;
- 18                       (4) the total dollar amount of proceeds the  
19 provider provided to consumers;
- 20                       (5) the total dollar amount of fees, voluntary  
21 tips, gratuities or other donations the provider received from  
22 consumers; and
- 23                       (6) any other information the division  
24 reasonably requires.

25           B. The reports shall be submitted to the division  
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1 on or before March 31 each year.

2 C. The reports shall be accompanied by a sworn  
3 statement by the provider under penalty of perjury that the  
4 report is complete and accurate.

5 D. A provider that fails to timely submit complete  
6 and accurate reports on or before March 31 may:

7 (1) be fined an amount not to exceed one  
8 hundred dollars (\$100) per day for each day after March 31 that  
9 a complete and accurate report is not filed; and

10 (2) have a license suspended pursuant to  
11 Section 58-34-7 NMSA 1978."

12 SECTION 14. A new Section 58-34-14 NMSA 1978 is enacted  
13 to read:

14 "58-34-14. [NEW MATERIAL] LIST OF PROVIDERS--  
15 COMPLAINTS--DIVISION ANNUAL REPORTS--PUBLICATION.--

16 A. The division shall:

17 (1) maintain a list of providers, which list  
18 shall be available to interested persons and the public; and

19 (2) establish a complaint process whereby an  
20 aggrieved consumer or other person may file a complaint against  
21 a provider.

22 B. The division shall compile from reports filed by  
23 providers an annual report by July 1 of each year containing  
24 data regarding earned wage access services conducted by  
25 providers, which data shall be aggregated for all providers and

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1 nonidentifiable by provider. Annual reports issued by the  
2 division shall be transmitted to the governor and the  
3 legislature and shall be published on the division's website.  
4 Written copies of the annual reports shall be made available  
5 upon request. Consistent with state law, the report shall  
6 include, at a minimum, nonidentifying aggregated consumer data  
7 from the preceding calendar year, including each of the  
8 specific categories of information set forth in Subsection A of  
9 Section 58-34-12 NMSA 1978."

10 SECTION 15. A new Section 58-34-15 NMSA 1978 is enacted  
11 to read:

12 "58-34-15. [NEW MATERIAL] EXCLUSIVE JURISDICTION OF  
13 STATE.--The state has exclusive jurisdiction and authority  
14 regarding the Earned Wage Access Services Act and providers.  
15 Political subdivisions of the state are preempted from any  
16 regulation of earned wage access services providers by  
17 ordinance, resolution or otherwise."

18 SECTION 16. A new Section 58-34-16 NMSA 1978 is enacted  
19 to read:

20 "58-34-16. [NEW MATERIAL] RULES AND ORDERS.--

21 A. The division has authority to make reasonable  
22 rules or orders for the administration and enforcement of the  
23 Earned Wage Access Services Act.

24 B. On application of a person and payment of the  
25 cost, the division shall furnish, under the division's seal and

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1 signed by the director or the director's authorized  
2 representative, a certified copy of a license, rule or order.  
3 In a court or proceeding, the copy shall be prima facie  
4 evidence of the fact of the issuance of a license, rule or  
5 order."

6 SECTION 17. A new Section 58-34-17 NMSA 1978 is enacted  
7 to read:

8 "58-34-17. [NEW MATERIAL] ADVERTISING--FALSE CLAIMS--  
9 REFERRAL TO STATE SUPERVISION.--A provider or other person  
10 subject to the Earned Wage Access Services Act shall not  
11 advertise, display, distribute or broadcast or cause or permit  
12 to be advertised, displayed, distributed or broadcast in any  
13 manner whatsoever a false, misleading or deceptive statement or  
14 representation with regard to its earned wage access services.  
15 The division may allow or require providers to refer in their  
16 advertising to the fact that their business is under state  
17 supervision, subject to conditions imposed by the division to  
18 prevent erroneous impressions as to the scope or degree of  
19 protection provided by the Earned Wage Access Services Act."

20 SECTION 18. A new Section 58-34-18 NMSA 1978 is enacted  
21 to read:

22 "58-34-18. [NEW MATERIAL] BUSINESS UNDER APPROVED  
23 NAME.--A provider shall not conduct earned wage access services  
24 as provided by the Earned Wage Access Services Act under any  
25 name other than the name approved by the division and stated on

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1 the license."

2 SECTION 19. A new Section 58-34-19 NMSA 1978 is enacted  
3 to read:

4 "58-34-19. [NEW MATERIAL] FINAL ACTIONS APPEALABLE TO  
5 DISTRICT COURT.--A provider or other person aggrieved by a  
6 final action of the division pursuant to the Earned Wage Access  
7 Services Act may file an appeal in the district court as  
8 provided by Section 39-3-1.1 NMSA 1978."

9 SECTION 20. A new Section 58-34-20 NMSA 1978 is enacted  
10 to read:

11 "58-34-20. [NEW MATERIAL] CONTRACTS NOT AFFECTED BY ACT  
12 AMENDMENT OR REPEAL.--If the Earned Wage Access Services Act or  
13 any part of that act is amended or repealed so as to effect a  
14 cancellation or alteration of a license or right of a provider,  
15 such amendment or repeal shall not impair or affect the  
16 obligation of any preexisting lawful contract between a  
17 provider and a consumer."

18 SECTION 21. A new Section 58-34-21 NMSA 1978 is enacted  
19 to read:

20 "58-34-21. [NEW MATERIAL] DIVISION RECORDS.--The  
21 division shall keep a detailed record of all fees, expenses and  
22 costs collected by the division and a detailed record of all  
23 expenses and disbursements of the division in the  
24 administration of the Earned Wage Access Services Act and rules  
25 promulgated in accordance with that act."

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