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## FISCAL IMPACT REPORT

**LAST UPDATED** \_\_\_\_\_

**SPONSOR** Gonzales/Parajón/De La Cruz **ORIGINAL DATE** 3/3/25

**BILL**

**SHORT TITLE** Price Fixing Prohibition & Tax Fairness **NUMBER** House Bill 476

**ANALYST** Chavez

### REVENUE\* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Fines and Forfeitures	No fiscal impact	Indeterminate but minimal gain	Indeterminate but minimal gain	Indeterminate but minimal gain	Indeterminate but minimal gain	Recurring	General Fund
Annual Supervision Assessment Fees	No fiscal impact	At least (\$2,500.0)	At least (\$2,800.0)	At least (\$2,800.0)	At least (\$2,800.0)	Recurring	General Fund

Parentheses ( ) indicate revenue decreases.

\*Amounts reflect most recent analysis of this legislation.

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMAG	No fiscal impact	At least \$131.8	At least \$131.8	At least \$131.8	Recurring	General Fund
Courts	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
<b>Total</b>	<b>No fiscal impact</b>	<b>At least \$131.8</b>	<b>At least \$131.8</b>	<b>At least \$131.8</b>	<b>Recurring</b>	<b>General Fund</b>

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Agency Analysis Received From

New Mexico Attorney General (NMAG)  
Economic Development Department (EDD)  
Regulation and Licensing Department (RLD)

## SUMMARY

### Synopsis of House Bill 476

House Bill 476 (HB476) would create the Price Fixing Prohibition, Consumer Transparency and Tax Fairness Act.

Section 3 of HB476 would make it unlawful for payment card networks i.e. (Visa, Mastercard,

Discover, etc.) or credit card issuers to fix or conspire to fix interchange fees (a fee established, charged or received by a payment card network for the purpose of compensating an issuer for the issuer's involvement in an electronic payment transaction). Payment card networks and covered credit card issuers would also be prohibited from forcing merchants to accept specific credit cards if they accept others that are already compatible with the electronic network and from imposing a penalty on a merchant based on the way the merchant lawfully sets prices for goods and services. Separately, the bill prohibits payment card networks from charging consumers or merchants' fees from disputed transactions unless proven that they are at fault in writing. The bill would also require credit card issuers, on or after 180 days after the effective date of HB476, to issue a monthly statement to consumers detailing whether an interchange fee was charged on credit card transactions and the amount charged for each interchange fee charged on each credit card transaction.

Section 4 of the bill would prevent merchants from being charged interchange fees on the tax amount or gratuity if merchants send the necessary tax or gratuity data during the authorization or settlement process of an electronic payment transaction. This section would also make it unlawful for any financial entity to manipulate or change the computation of interchange fees to increase the fee rate on the portion of the transaction that are not attributable to taxes or gratuities to circumvent the regulations of HB476.

Section 5 would create a new section governing penalties, providing the New Mexico Attorney General (NMAG) to seek injunctive relief and to collect civil damages if NMAG believes the regulations of HB476 were violated. The section also provides that financial entities who have received tax or gratuity data and violate the interchange fees on taxes and gratuities restrictions are subject to a civil penalty of \$1,000 per transaction. Additionally, the entity would have to refund the merchant for interchange fees wrongly charged on tax or gratuity portions of the transaction.

HB476 would prohibit financial entities and those related from distributing, exchanging, transferring, disseminating, or using transaction data for purposes other than:

- Facilitating or processing electronic transactions,
- Monitoring,
- Detecting or preventing fraud,
- Supporting loyalty programs,
- Rewards or promotional offerings,
- Tailoring products and services to serve customer needs, or
- As required by law.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## **FISCAL IMPLICATIONS**

The Regulation and Licensing Department (RLD) provides the following regarding the fiscal implications of HB476 on the private sector and on the agency itself:

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 HB476 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 HB476 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, HB476 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.

As noted, HB476 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.

NMAG is empowered to enforce the regulations of HB476. Because of this, NMAG would likely be required to collect and analyze consumer complaints and line attorneys to investigate and bring civil actions for violations under HB476. NMAG has prosecuted against actions related to price manipulation like sending cease and desist letters to hotels who allegedly engaged in price gouging when victims of wildfires in southern New Mexico sought shelter.<sup>1</sup> NMAG already is investigating price manipulation and could use that expertise and experience to take on the added responsibility from HB476. However, because HB476 would further regulate the financial sector, the number of transactions alone that happen in a day could result in the need for additional resources. At least one more FTE would be needed at a cost of at least \$131.8 thousand, the average salary in the legal services program within NMAG, to help monitor, investigate, and litigate violations of the bill. The fiscal impact could be substantially higher because of how large and complicated financial networks and transactions are and if additional information technology is needed to properly alert and identify violations. As of 2023, nationwide credit card transactions totaled **53.8 billion** for an average of **147.5 million** per day and American consumers used credit cards to pay for 4-in-10 in-store purchases.<sup>2</sup> Regulating this large volume of activity could create a large fiscal burden on NMAG.

HB476 also provides NMAG with the enforcement mechanism of imposing civil penalties, meaning the bill could generate revenue. As mentioned, financial networks tend to be large and complicated and hold a large amount of transaction data, making enforcement of the bill difficult; this analysis assumes that the revenue generated from HB476 would therefore be indeterminate but with a minimal gain. It is difficult to determine if revenue that could be generated from prosecuting the bill could offset the revenue loss in Annual Supervision Assessment Fees paid to the state.

HB476 could result in more court hearings because NMAG could sue for unlawful practices and civil penalties, while merchants could file lawsuits to recover interchange fees, including class action suits for violations. Merchants could also sue if they face penalties for setting prices. Consumers would have the right to sue if interchange fees are not clearly disclosed on statements. Additionally, there would be more litigation under the unfair practices act for the improper use of transaction data. These factors would have an additional operating budget impact on the courts but because these factors would depend on how well NMAG could prosecute violations of the bill and how well the entities adhere to the regulations, the impact would be indeterminate but minimal.

## SIGNIFICANT ISSUES

RLD provides the following:

HB476 establishes a minimum threshold of eighty-five billion dollars (\$85,000,000,000)

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<sup>1</sup> [NM attorney general sends cease and desist letters to hotels on price gouging • Source New Mexico](#)

<sup>2</sup> [Number of Credit Card Transactions per Second & Year: 2024 Data](#)

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 HB476, 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 HB476. 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, HB476 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 HB476.

NMAG provides the following:

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).

## **TECHNICAL ISSUES**

RLD points out that HB476 includes "affiliates" in its definition of "covered credit card issuer," but since "affiliates" is not clearly defined in HB476, it is unclear if this includes contractual relationships between an acquirer institution and an issuer to supply services to the acquirer's customers. To avoid confusion, language should be included to clarify that civil penalties should apply only to the entity responsible for a violation, not all parties involved in an electronic payment transaction.

## **OTHER SUBSTANTIVE ISSUES**

The Economic Development Department (EDD) provides the following:

This bill aims to enhance protections for merchants and small business owners, potentially benefiting entrepreneurs. However, discussions with payment processors, networks, and related entities should be prioritized, as the potential burden on electronic payment processing remains unclear. While the goal is consumer protection, further expert analysis is needed to assess impacts on banks, processors, and similar entities. Necessary modifications to practices, fee structures, and internal mechanisms could create setbacks for both small businesses and digital transaction oversight. Implementation challenges may lead to short-term economic disruptions but could yield long-term gains by fostering transparency, increasing business revenues, and ultimately expanding the tax base.

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