

LFC Requester:	Noah Montano
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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: 1/30/25

Check all that apply:

Bill Number: HB59

Original Correction
 Amendment Substitute

Sponsor: Rep. Micaela Lara Cadena
Rep. Tara L. Lujan

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

Short Title: EARNED WAGE ACCESS
SERVICES ACT

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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: New Mexico Small Loan Act. §§ 58-15-1 to -41 NMSA.

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:

This bill creates a new licensing department and classification for “Earned Wage Services.” Earned Wage Services are products related to delivering consumers money based on and in advance of earned wages. The bill would create new licensing and regulation requirements to be instituted by the Financial Institutions Division of the Regulation and Licensing Department regarding newly defined Earned Wage Services. This bill enacts licensure requirements for earned wage service providers and defines earned wage services as separate and distinct from small loans governed by New Mexico’s 36% interest rate cap.

Section 1 creates the Earned Wage Services Act

Section 2 defines terms, including defining a “fee” as “not including voluntary tip, gratuity, or other donation.” Under current state and federal law, “monies paid to a creditor “any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit,” are finance charges, or fees. 15 U.S.C. § 1026.4(a). This bill would exempt solicited donations from being considered finance charges.

Section 3 creates licensure requirements and defines Earned Wage Services as not being considered “a loan or other form of credit or debt, nor shall the provider be considered a creditor, debt collector, or lender thereto,” or a money transmitter. This definition would prevent Earned Wage Services from being subject to New Mexico’s 36% APR cap and prevent consumer protection laws from applying to these transactions.

Section 4 provides for licensure applications and that the division shall grant or deny each application within 60 days from filing. Allows for appeal as provided by § 39-3-1.1 NMSA 1978.

Section 5 details information contained on the license. Except as a stockholder in a corporation licensed as a provider, a person whose name is not on the face of the license shall not hold any interest.

Section 6 details hearings on license renewals and denials. Division may grant temporary extension if they find a provider does not meet the qualifications for license renewal.

Section 7 provides for license suspension and revocation. The division may revoke a license for cause. False information is grounds for denial.

Section 8 provides for service of notice—complete upon receipt of the notice by the intended recipient.

Section 9 details fees to be collected in the division’s suspense account. Application fee, renewal, and late renewal fees.

Section 10 provides for investigation and examination of licensed providers’ books records and other information. It states that “For the purposes of this section, a person who advertises, solicits or makes any representation as being willing to engage in business as a provider, except persons or financial institutions expressly excluded from the definition of a provider pursuant to Section 58-34-2 NMSA 1978 or expressly exempted pursuant to Section 58-34-3 NMSA 1978, is presumed to be engaged in the business of a provider and shall be subject to investigation pursuant to this section.”

Section 11 details records retention requirements. Each provider shall keep records.

Section 12 details the disclosure requirements for providers when “offering a consumer the option to receive proceeds for a fee, offer to the consumer at least one reasonable option to obtain proceeds at no cost to the consumer and clearly explain how to elect that no-cost option.” The bill does not define what “at least one reasonable option” is nor what constitutes a “reasonable option to obtain proceeds at no cost to the consumer.” This lack of clarity will likely result in courts interpreting this obligation. Additionally, this section allows for a provider to seek repayment for the provider’s solicited “voluntary tips, gratuities or donations,” aligning with the definition of finance charges under Regulation Z. This section also caps the single transaction fee at \$7.50.

Section 13 details annual reporting requirements for licensure, to be provided to the division on or before March 31 each year.

Section 14 requires the division to maintain a list of providers and establish a complaint process.

Section 15 provides for exclusive jurisdiction of the state, preempting the power of any political subdivision to regulate earned wage services differently.

Section 16 grants rule making authority to the financial institutions division of the regulation and licensing department.

Section 17 prohibits service providers from false advertising and allows for service providers to advertise that they are under state supervision.

Section 18 prohibits providers from operating under a name different from their license.

Section 19 allows for final actions to be appealable to the district courts.

Section 20 provides that contracts entered into under this act will remain in effect if the act is repealed.

Section 21 requires the division to keep detailed records of all fees expenses and costs collected by the division

Section 22 makes violation of the requirements a petty misdemeanor “punished by a fine of not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000).”

Section 23 applies the provisions of the act to apply to service providers issued licenses on or after October 15, 2025.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

This bill proposes a new regulatory structure for services that advance money for earned but unpaid wages and allows for the service provider to seek repayment in the future. Currently, these transactions would fit the definition of a loan or extension of credit under New Mexico law, which imposes an interest rate cap at 36%. Section 58-15-1 to -41 NMSA. This bill would exempt Earned Wage Service providers from New Mexico’s usury and consumer protection laws and allow for interest rates in excess of 36% to be charged. Section 12 imposes a \$7.50 cap on transactions; however, this amount allows for APRs in excess of 36%. For example, a single transaction of \$106 with \$3.18 in fees for a ten-day period equates to an APR of 109.5%.

The services described in this bill fall under the existing New Mexico Small Loan Act and federal regulations. The NMSLA defines, “the payment of ten thousand dollars (\$10,000) or less in money, credit, goods or things in action, as consideration for any sale or assignment of or order for the payment of wages, salary, commission or other compensation for services, whether earned or to be earned, shall, for the purposes of regulation under the New Mexico Small Loan Act of 1955, be deemed a loan of money secured by such sale, assignment or order.” § 58-15-21 NMSA 1978. The Small Loan Act additionally references federal Regulation Z when defining “installment loan.” § 58-15-2(F)(1) NMSA 1978.

Section 1026.2(a)(14) of Regulation Z defines “credit” as “the right to defer payment of debt or to incur debt and defer its payment.” The Truth in Lending Act (“TILA”) defines “credit” virtually identically as “the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.” 15 U.S.C. § 1602(e). Earned wage products fall under the legal definition to be considered consumer credit for purposes of New Mexico state law, TILA and Regulation Z.

Section 2(K) of this bill defines tips and donations solicited by the provider as distinct from finance charges. This will affect how APR is calculated on these products as APR includes the interest on a loan in addition to the associated finance charges. The use of this language exempts anything classified as a tip, donation, or gratuity from being calculated as a finance charge and therefore not included in APR. The bill does not include restrictions on the solicitation of tips to

access earned wages and Section 12(A)(9) allows for providers to seek repayment for “voluntary tips, gratuities, or donations” from a consumer’s bank account. New Mexico’s APR is calculated in line with regulation Z in that charges for any ancillary product or service sold or any fee charged in connection or concurrent with the extension of credit are considered finance charges. § 58-15-21 NMSA 1978.

PERFORMANCE IMPLICATIONS

The bill provides for a relator to bring an action on behalf of the Attorney General for injunctive relief. “An action may be brought on the relation of the attorney general and the division to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation.” Section 58-34-10(J). This would require a review of the action by NMDOJ attorneys to determine whether it is in the best interest of the state to intervene.

ADMINISTRATIVE IMPLICATIONS

There are no direct administrative implications for the NMDOJ in this bill. Licensing and administration would be handled by the financial institutions division of RLD, while the NMDOJ has the option to intervene in injunctive actions.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill would remove earned wage services from being governed by the New Mexico Small Loan Act. §§ 58-15-1 to -41 NMSA.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS