

**“EXHIBIT A”**

**SMALL BUSINESS IMPACT STATEMENT FOR PROPOSED REGULATIONS BY  
THE FINANCIAL INSTITUTIONS DIVISION (Division)  
TO SENATE BILL (SB) 290  
EARNED WAGE ACCESS  
September 12, 2023**

**1. Small Business Impact Statement pursuant to NRS 233B.0609:**

**(a) A description of the manner in which comment was solicited from affected small businesses, a summary of their responses, and an explanation of the manner in which other interested persons may obtain a copy of the summary.**

**(I) Solicitation of affected small businesses.**

The Division sought comments in accordance with NRS 233B.0608 for the purpose of considering whether as a result of the proposed regulations, there may be a direct and significant economic burden upon small business (defined as fewer than 150 employees) or if the regulations will directly restrict the formation, operation or expansion of a small business seeking to those engaged in or who desire to engage in the business of extending credit to ensure that there is established in this state an adequate, efficient and competitive service available to the general public.

The Division composed the solicitation list from current licensees under Nevada Revised Statutes Chapter 675 and known interested parties. In turn, the Division solicited comments on the proposed regulations for Senate Bill 290 (S.B.290) from the above lists by emailing a notice and questionnaire. Additionally, a copy of the full text of the proposed regulations was emailed and posted to the Division’s website. The solicited comments were used to formulate this Small Business Impact Statement.

**(II) Summary of responses.**

See attached spreadsheet.

**(III) Obtain a copy of the summary.**

This Small Business Impact Statement was posted on the NFID website on October 16, 2023, along with a Notice of Workshop for November 3, 2023. Interested persons may also obtain a copy of the Small Business Impact Statement by contacting the:

**Office of the Commissioner  
Financial Institutions Division  
3300 W. Sahara Avenue, Suite 250  
Las Vegas, NV 89102  
Email: FIDMaster@fid.state.nv.us  
Telephone: (702) 486-4120  
Website: <http://fid.nv.gov>**

**(b) The manner in which the analysis was conducted.**

Pursuant to NRS 233B.0608(1), the Division made a concerted effort to determine whether the proposed regulations are likely to impose a direct and significant economic burden upon a small business; or directly restrict the formation, operation or expansion of a small business. For this effort, the Division sent a copy of the draft regulations and a Small Business Impact Questionnaire to all known interested parties for review and invited written comment regarding the impact to the entities, NFID took all comments submitted into consideration.

Following review and analysis of the authorizing statutory language S.B.290 and written comment from the industry, the Division has determined that the proposed regulation is unlikely to impose a direct and significant economic burden upon a small business; result in any direct or indirect adverse effects on small business; or directly restrict the formation, operation, or expansion of a small business. Majority of the comments received were directed towards S.B.290 and not the proposed regulation.

**(c) The estimated economic effect of the proposed regulation on the small businesses which it is to regulate including, without limitation:**

**(1) Both Adverse and Beneficial effects:**

**(I) ADVERSE EFFECTS:**

The industry's biggest concern with the proposed regulation was the language reserving the Commissioner's right to approve advertising, since unethical, false or misleading advertisement is prohibited. The industry stated this may negatively impact business operations. The Division amended this language to clarify the Commissioner may require approval of advertisement if violations pertaining to licensee's advertising practices are discovered during an examination or investigation.

There was one comment regarding the fees the Division will charge. The fee maximum was set by S.B.290 and align with other license types of the Division.

The other comments were more directed towards S.B.290 and not the proposed regulations.

**(II) BENEFICIAL EFFECTS:**

The industry is in favor of earned wage access regulation, that it will help consumers evaluate earned wage access providers and the cost of competing earned wage advance products. It will allow employers to see what earned wage access providers are licensed and hopes that more employers will adopt an earned wage access program. The proposed regulations will provide regulatory clarity and certainty for their businesses to continue to grow and operate in the state of Nevada.

**(2) Both Direct and Indirect effects:**

**(I) DIRECT EFFECTS:**

The industry's biggest concern with the proposed regulation was the language reserving the Commissioner's right to approve advertising, since unethical, false or misleading advertisement is prohibited. The industry stated this may negatively impact business operations. The Division amended this language to clarify the Commissioner may require approval of advertisement if violations pertaining to licensee's advertising practices are discovered during an examination or investigation.

There was one comment regarding the fees the Division will charge. The fee maximum was set by S.B.290 and align with other license types of the Division.

The other comments were more directed towards S.B.290 and not the proposed regulations.

**(II) INDIRECT EFFECTS:**

The industry believes the regulations will provide a benefit to their current and prospective employer partners in Nevada, as they will be able to readily determine which earned wage access providers are licensed. As a result, more employers are likely to adopt an earned wage access program, and the compliance process of onboarding a provider will go more quickly. Taken together, this will have an indirect, beneficial effect on business growth in Nevada.

**(d) A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.**

The Division sent out 147 small business questionnaires to all known interested parties. It received a total of fourteen (14) responses to the solicitation. Seven (7) small businesses provided comment, three (3) responded with N/A or no impact, and four (4) responded with no comment because they were over the small business threshold of 150 employees. The Division has considered and analyzed all submitted comments and addressed those comment in the attached summary of response spreadsheet. The majority of the comments were more directed towards S.B. 290 and not the proposed regulation, the Division cannot change current law but has drafted the proposed regulation to mitigate concerns from the industry and provide clarification.

**(e) The estimated cost to the agency for enforcement of the proposed regulation.**

The estimated cost to the Division for enforcement of the proposed regulation should be covered by the proposed fees to be collected by the Division. The Division does not foresee the need for any additional funding or budget increase.

**(f) If the proposed regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect, and the manner in which the money will be used.**

**The 1<sup>st</sup> Year → \$50,000** (Based on the application fee of \$1,000 and initial licensing fee of \$1,000 for 25 entities).

**The 2<sup>nd</sup> Year → \$81,250** (Based on yearly renewal fee of \$1,000 and hourly examination Fee of \$75 with the average examination projected to take approximately 30 hours to complete). It is also expected that the following yearly examinations will not take 30 hours to complete thus lowering this cost in future years.

In addition, there is an annual Certified Public Account (CPA) assessment that will never exceed \$300.00. This assessment covers the expenses to employ the CPA and no more than the projected expenses are assessed to the licensees. The total projected CPA expense is divided among all licensees the Division regulates, not just this industry, keeping the total assessment per licensee at a minimal.

The fees collected will be used by the Division to regulate the industry at the most economical method possible with the Division's established objective to maintain fees at a level to cover agency costs to implement/operate/enforce and not to over burden small business with high and unnecessary fees.

**(g) If the proposed regulation includes provisions which duplicate or are more stringent than federal, state, or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.**

To the Division's knowledge, the proposed regulations do not duplicate any existing federal, state, or local standards regulating the same activity.

**(h) The reasons for the conclusions of the agency regarding the impact of the regulation on small businesses.**

This is a result of the passage of new legislation, S.B. 290. The Division can only lessen the impact on small business by proposing regulation that provides clarification to the industry. The regulation itself does not impose an economy burden to small business.

To the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and that the information contained in this Small Business Impact Statement was prepared properly and accurate.

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Sandy O'Laughlin  
Commissioner

Financial Institutions Division  
 State of Nevada, Department of Business and Industry

<u>SB290- Earned Wage Access- Direct or Indirect Impact Item from Small Businesses</u>	<u>Number/ and %</u>	<u>Direct or Indirect</u>	<u>Adverse or Beneficial</u>	<u>NFID Answer/Mitigation</u>
Section 10.2, if exercised, may negatively impact business operations. No state authority should have unfettered authority over speech. This "right" is presumptively unconstitutional.	4 (57.1%)	Direct	Adverse	The intent of this proposed section is to give the Division the discretion to request advertising for approval if and when an issue may be present. The Division does not intend to request advertising for approval in every situation. The Division has amended this section, for clarification that the Division may request advertising to be approved if a violation is discovered during an examination or investigation.
Section 29 (2)b, 5(a)(b), disclosures will allow consumers to know true cost of the wage advance and enable consumers to effectively compare providers and make an informed decision concerning the wage advance.	1 (14.3%)	Direct	Beneficial	No response is required since this comment does not have an adverse impact on small business and the sections mentioned are from the Bill 290 and not the proposed regulation.
Would like the Division to amend the regulations to make explicit that earned wage advance providers who provide technology and other services to assist banks need only comply with the provisions of the proposed regulation that regulates to the earned wage advance providers servicing and collection activities.	2 (28.6%)	Indirect	Adverse	SB290 does not exempt these types of entities, therefore, the Division cannot draft regulations to exempt these entities. A person who believes they are exempt may request a licensure determination from the Division.

Welcomes earned wage access regulation. Will help consumers evaluate earned wage access providers and the cost of competing earned wage advance products.	1 (14.3%)	Indirect	Beneficial	No response is required since this comment does not have an adverse impact on small business.
The specific vetting requirements in the statute and proposed regulation are unclear.	3 (42.9%)	Direct	Adverse	SB290 is clear on what individuals need to be vetted and what is required to vet these individuals. SB290, section 13.2 states "each owner, officer, director and responsible person of the applicant, each person in control of the applicant and any other person the Commissioner may require..." The Division cannot change the language in SB290.
SB290 allows for unaudited financial statements to be submitted until audited financials are available. Under section 8 of the current draft regulations, licensees audited financials are required to be submitted each year by April 15th, or by June 30th if unavailable by April 15th.	1 (14.3%)	Direct	Adverse	The Division needs to establish a due date for when audited financial statements will be submitted. If left without a due date, the licensee could go years until audited financials are available. As stated in the regulation. the Division will grant an extension for good cause, for a reasonable amount of time. SB290 does not allow for the waiver of audited financial statements.
The reporting requirements are not bound to activities in the state of Nevada. Do not see why licensees should report on the number and fees paid by users each year but should report on tips for all time periods and locations. Burdensome for small businesses that are subject to similar requirements in sister states if the data elements to be reported materially differ across jurisdictions.	1 (14.3%)	Direct	Adverse	Since the licensee is licensed by Nevada to offer earned wage access to Nevada consumers, the Division is only concerned with the data for Nevadans. Its anticipated that this data will be useful for the Division as well as for the report that is due to the Legislative Counsel Bureau on December 31, 2025.

<p>For a start-up company that has just begun raising capital, the fees and costs outlined in the proposed rules, Draft Proposed Regulation Sec. 5-7, 12(b), would impose a significant burden on fledgling companies like it, as many rely initially on self-funding. In order to attract investment and raise capital, such companies often need to first pilot their programs on a limited basis to serve as “proof of concept” for investors and allow the company to hone their products to better serve consumers prior to a full-scale launch. Under the proposed rules, there are no accommodations to provide relief to start-up companies. We urge NFID to consider including a waiver of some or all application and licensing-related fees based on company size and/or number of customers. For example, NFID could waive fees for companies with less than 10 employees who have less than 500 Nevada customers.</p>	<p>1 (14.3%)</p>	<p>Direct</p>	<p>Adverse</p>	<p>The fees are in align with other license types of the Division and the maximum was set by SB290. The start-up cost for the initial application and licensing is \$2,000. \$1,000 annually after that for renewing the license. The examination hours will be based on the sampling size and other factors, such as if a licensee is in compliance with the provisions of SB290 and regulation. More violations, more time spent on an examination. The CPA fee is annually and no more than \$300.00. The travel expenses for an examiner to travel to an out-of-state location will occur if the licensee requests the Division to go onsite or if the licensee is operating at an unsatisfactory level.</p>
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<p>The lack specificity in defining what an EWA provider is opens the door for payday lenders and other predatory lenders to now license themselves as EWA providers. The lack of fee caps, no clear definition of how the earned wage is determined and the ability to debit a consumer’s bank account creates a platform for companies to avoid usuary or other limitations present in other licensing requirements. For small companies focused on an employer-based solution, consistent with the CFPB Advisory Opinion requirements the message will be drowned out in the marketing hype of larger players entering the marketplace to the detriment of the Nevada consumers.</p>	<p>1 (14.3%)</p>	<p>Indirect</p>	<p>Adverse</p>	<p>SB290 defined an earned wage access provider and did not allow for caps. The Division cannot change the language in SB290 or write regulations that do not support SB290.</p>
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<p>The proposed regulations will provide regulatory clarity and certainty for our businesses to continue to grow and operate in the state of Nevada.</p>	<p>1 (14.3%)</p>	<p>Direct</p>	<p>Beneficial</p>	<p>No response is required since this comment does not have an adverse impact on small business.</p>
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<p>The proposed regulations will provide a benefit to our current and prospective employer partners in Nevada, as they will be able to readily determine which EWA providers are licensed. As a result, more employers are likely to adopt an EWA program, and the compliance process of onboarding an EWA provider will go more quickly. Taken together, this will have an indirect, beneficial effect on business growth in Nevada.</p>	<p>1 (14.3%)</p>	<p>Indirect</p>	<p>Beneficial</p>	<p>No response is required since this comment does not have an adverse impact on small business.</p>
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**SBI Response Summary:**

Total Known Interested Parties Solicited: 147

Total Responded with Comments: 7

Total Responded with N/A: 3

Total Responded with over 150 Employees (outside the small business threshold): 4

Total Comments Impacting the SBI % (Total Known Interested Parties Solicited - N/A - over 150 Employees=): 140

% Responded/Total Solicited (14/147): 9.52%

% Responded with Comments/Total Comments Impacting SBI(7/140): 5.00%