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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Matthews/Martinez, A **ORIGINAL DATE** 2/14/25

BILL

SHORT TITLE Litigation Financing Transparency Act **NUMBER** House Bill 312

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

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
Courts	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
NMAG	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
Total	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From

Judicial Standards Commission (JSC)

Administrative Office of the Courts (AOC)

State Auditor (OSA)

Law Offices of the Public Defender (LOPD)

Agency Analysis was Solicited but Not Received From

New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of House Bill 312

House Bill 312 (HB312) creates the Litigation Financing Transparency Act, which establishes disclosure requirements, restrictions, and enforcement mechanisms related to third-party litigation financing in civil cases and administrative proceedings. The bill defines key terms, sets

limitations on the role of litigation financiers, mandates public and court disclosures, and establishes penalties for noncompliance. It applies to all legal cases initiated or pending on or after December 31, 2025.

The bill defines a litigation financier as any entity that provides financial support for legal cases in exchange for repayment, interest, fees, or a share of settlement or judgment. It also introduces terms such as "foreign person," "foreign principal," and "sovereign wealth fund" to identify foreign-controlled entities that may engage in litigation financing. The bill specifies that a litigation financing agreement involves providing funds to cover legal expenses, with repayment contingent on the outcome of a case. However, the legislation exempts agreements between an attorney and their client under contingency fee arrangements and excludes traditional loans from banks or financial institutions that do not depend on the case's outcome.

HB312 prohibits litigation financiers from influencing case strategy, including decisions about legal representation, expert witness selection, and litigation tactics. It also bans referral fees, commissions, or incentives for directing clients to specific financiers, law firms, or healthcare providers. Additionally, litigation financiers are prohibited from assigning or selling litigation financing agreements to third parties and cannot hold any ownership stake in the legal claims they fund.

The bill requires mandatory disclosure of litigation financing agreements to all parties involved, the court, and certain government entities. Within 30 days of entering into a financing agreement, legal counsel must provide a copy of the agreement to all clients, opposing counsel, the court, and any known indemnifiers such as insurers. In class action lawsuits, disclosure must also be made to class members upon request, and in multidistrict litigation, to all appointed leadership counsel. If a litigation financier is a foreign person, foreign principal, or sovereign wealth fund, the agreement must be disclosed to the U.S. Department of State and the U.S. Attorney General's Office. The bill also establishes continuing disclosure obligations, meaning any amendments to a financing agreement must be reported. Before producing a financing agreement in response to a discovery request, a party may request that the court conduct an in-camera review to determine if the agreement qualifies as litigation financing under the bill. If a party fails to make the disclosures required by the Litigation Financing Transparency Act or their disclosure is evasive or incomplete, the court will determine sanctions on the offending party.

The legislation further requires litigation financiers to indemnify funded clients against adverse costs, attorney fees, damages, or sanctions resulting from a case. However, indemnification is not required in instances where the funded party engaged in intentional misconduct. The bill also establishes penalties for violations, stating that any litigation financing agreement that fails to comply with the act is void. Additionally, a litigation financier that violates any provision of the act commits an unlawful act under the Unfair Practices Act, making them subject to legal penalties and enforcement actions.

The effective date of this bill is December 31, 2025.

FISCAL IMPLICATIONS

The Administrative Office of the Courts (AOC) provides the following analysis on fiscal implications:

There will be a minimal administrative cost for statewide update, distribution and

documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and the imposition of fines, commenced prosecutions and actions under the Unfair Practices Act, and appeals from fine impositions, convictions and actions brought pursuant to the Unfair Practices Act, as well as requests for in-camera review of a litigation financing agreement, and the imposition of sanctions for a party that fails to make the disclosures required by HB312. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

As violations of HB312 would be an unlawful act under the Unfair Practices Act, the New Mexico Attorney General (NMAG) would require some more resources to enforce and investigate any possible violations of the act. HB312, however, has most of its fiscal impact on the entities involved in litigation financing.

SIGNIFICANT ISSUES

The AOC explains that HB312 may violate the separation of powers in Article III, Section 1 of the New Mexico Constitution by infringing on the judiciary's power to regulate both the practice of law and procedure in New Mexico courts.¹ AOC also believes that Section 4 of HB312, which requires automatic disclosure to all parties and require courts to conduct in camera review of litigation financing agreements and impose sanctions in some instances, does not take into account existing discovery provisions in the Rules of Civil Procedure or confidentiality requirements in the Rules of Professional Conduct.

AOC also notes that the permitted use of litigation financing agreements in the definition supplied in Section 2(I) of HB312 also may conflict with Rule 16-105, Rules 16-108(A), (E), and (F), and Rule 16-504(D) NMRA. These rules aim to safeguard ethical standards, avoid conflicts, and protect client confidentiality and interests.

AOC also mentions that in February 2024, the National Conference of State Legislatures (NCSL) highlighted state lawmakers' involvement in third-party litigation funding, a potentially \$5 billion industry in the U.S.² The NCSL referenced a State Net Capitol Journal article noting that, as of February 2024, legislation addressing litigation funding was pending in 10 states. These measures focused on issues like disclosure requirements, contract stipulations, consumer protections, and the applicability of usury laws³.

If a litigation financier violates the regulations in the bill, they would commit an unlawful act under the Unfair Practices Act. AOC points out that the Unfair Practices Act provides private remedies, a civil penalty imposed by NMAG and permits service of a civil investigative demand by NMAG.

PERFORMANCE IMPLICATIONS

¹ [Ammerman v. Hubbard Broadcasting, Inc. :: 1976 :: New Mexico Supreme Court Decisions :: New Mexico Case Law :: New Mexico Law :: U.S. Law :: Justia](#)

² [State Lawmakers Wade Into Third-Party Litigation Funding - National Conference of State Legislatures](#)

³ [State Lawmakers Wade Into Third-Party Litigation Funding](#)

The courts participate in performance-based budgeting and the bill may have an impact on the following performance measures: cases disposed of as a percentage of cases filed (clearance rate) and percent change in case filings by case type.

ADMINISTRATIVE IMPLICATIONS

HB312 calls for various disclosures to the courts, meaning that the courts would have to expand their documentation process to make sure all mandated disclosures are properly filed and stored. Requiring the courts conduct in-camera reviews would also take up resources.

NMAG would have to develop methods to enforce and investigate any possible violations of HB312.

FC/hj/SL2/sgs