

LFC Requester:

Felix Chavez

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: 2/5/2025

Check all that apply:

Bill Number: HB 262

Original Correction
Amendment Substitute

Sponsor: Rep. Rebecca Dow

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

Person Writing

Short Title: LEGAL SERVICES ADVERTISEMENTS

Analysis: Douglas Wilber

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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:
 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 adds restrictions on attorney advertising, with civil penalties and NMDOJ enforcement.

Section 1 adds a new section to Chapter 57 (Trade Practices and Regulations) to require that when an attorney or law firm advertises that a client received a dollar amount of a money judgment or settlement in a civil action, they must include in the advertisement how much the attorney or law firm charged the client for services rendered in that action. Subsection (B) creates a \$500 civil penalty per violation, which shall be assessed by the attorney general. Subsection (C) gives the attorney general or, with their permission, a district attorney, authority to bring a civil action to recover the penalty. Subsection (D) specifies that the collected civil penalties must be deposited in the “current school fund.”

Section 2 makes the law effective on July 1, 2025.

FISCAL IMPLICATIONS

Although the bill would require the attorney general to assess civil penalties (presumably after monitoring such activity) *and* bring civil actions to enforce the bill, it does not provide for appropriations or resources to the New Mexico Department of Justice (NMDOJ).

SIGNIFICANT ISSUES

The bill specifically restricts attorney advertisements, in contrast with laws that address advertising in general, and thus constitutes the regulation of attorneys. The regulation and discipline of attorneys is found generally in two specific parts of New Mexico Law: NMSA 1978, §§ 36-2-1 to -40 NMSA and Rule Sets 15 through 19 NMRA. Rule Set 16 contains the code of professional conduct for attorneys, and Rule Set 17 addresses discipline, including setting up the Disciplinary Board as well as procedures for disciplining attorneys. The passage of this bill could create a conflict between the authority of the New Mexico Supreme Court to regulate attorneys, including promulgating rules for their discipline, and the authority of the Attorney General under this statute. It is unclear whether or to what extent this bill is intended to work in harmony with the existing laws regulating attorneys—e.g., whether it is intended to supplement, replace, or be wholly independent of the rules of professional conduct. Also, the prohibition in Section 57-15-2 on false and misleading advertising could encompass the activities identified in this bill, which could render this duplicative.

There is a potential for a Constitutional challenge under the First Amendment (United States) or the New Mexico Constitution as a restriction on speech—restrictions on lawyer advertisements have been dealt with multiple times by the United States Supreme Court: “Even when a communication is not misleading, the State retains some authority to regulate. But the State must assert a substantial interest and the interference with speech must be in proportion to the interest served.” *In re R. M. J.*, 455 U.S. 191, 203 (1982).

There is potentially a lack of clarity about how to apply “Charged to a client.” The phrase could mean an up-front fee, a contingency agreement, etc. When dealing with contingency fee arrangements, for example, if an advertisement pertains to a client’s verdict, but the judgment has not been fully satisfied and/or the lawyer or firm has not received all or any of money they may be entitled to, it is unclear what that firm’s obligation would be under this statute.

Additionally, stating the amount charged to a client could implicate Rule 16-106: A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by Paragraph B of this rule. [Paragraph B authorizes it to comply with other law.]

PERFORMANCE IMPLICATIONS

Creates additional workload and monitoring/enforcement requirements for NMDOJ without additional resources.

ADMINISTRATIVE IMPLICATIONS

This bill creates a duty for the NMDOJ to police and assess fines for each violation. This will create additional layers of information tracking and obligations for the NMDOJ.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

N/A