

<b>LFC Requester:</b>	<b>Chavez</b>
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**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**

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*(Analysis must be uploaded as a PDF)*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** 2/10/25 *Check all that apply:*  
**Bill Number:** HB 312 Original  Correction   
 Amendment  Substitute

**Sponsor:** Rep. Marian Matthews **Agency Name and Code** AOC  
**Short Title:** Litigation Financing **Number:** 218  
**Title:** Transparency Act **Person Writing** Celina Jones  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	Rec.	General

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) indicate revenue decreases)

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

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis: HB 312 enacts the “Litigation Financing Transparency Act.” The Litigation Financing Transparency Act (LFTA) sets forth multiple definitions used in the act. This includes a definition for “litigation financing agreement” as “an agreement for which a person agrees to provide financing, funding, advancing or loaning of money to pay for fees, costs, expenses or other sums arising from or in a manner related to an action in exchange for the right to receive payment, interest, fees or other consideration that cumulatively exceeds the amount of money given by the person and that is contingent on the outcome of a matter within a portfolio that includes the action and involves the same counsel or affiliated counsel[.]” The definition of litigation financing agreement also sets forth agreements excluded from the definition including, but not limited to, agreements with certain parties and 501(C)(3) organizations.

The LFTA also prohibits certain conduct by litigation financiers. These prohibitions include forbidding a financier from making decisions regarding the course of the litigated action and retains the decision-making authority in the client and counsel of record. Financiers are also prohibited from paying referral fees, and from assigning or being assigned rights in an action that is already subject to a litigation financing agreement.

The LFTA also sets forth required disclosures for legal counsel. The LFTA requires counsel to deliver a copy of the financing agreement to all parties in the litigation, the court, and any persons known who have a prior contractual obligation to indemnify a party, including any insurers. The LFTA also provides specifications for notice particular to class actions. The LFTA sets forth that all disclosure requirements are ongoing.

Failure to make required disclosures are subject to sanctions to be determined by the court under the LFTA.

The LFTA provides that a court may review a financing agreement in-camera to ensure it meets the requirements of the act and that the agreement may redact financier identifying information for this review.

The LFTA requires a financier to indemnify the client (funded customer).

The LFTA also provides that a litigation financing agreement entered into in violation of the LFTA is void, and that violations of the act are subject to the Unfair Practices Act.

The LFTA applies to civil and administrative proceedings and is effective December 31, 2025.

#### **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 the LFTA. 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.

## SIGNIFICANT ISSUES

- 1) HB 312 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 under *Ammerman v. Hubbard Broadcasting, Inc.*, 551 P.2d 1354 (1976) (<https://law.justia.com/cases/new-mexico/supreme-court/1976/10937-0.html>) and its progeny.

Especially problematic provisions of HB312 include those in Section 4 which require automatic disclosure to all parties, insurers, and the tribunal, and require courts to conduct in camera review of litigation financing agreements and impose sanctions in some instances, irrespective of existing discovery provisions in the Rules of Civil Procedure or confidentiality requirements in the Rules of Professional Conduct. The permitted use of litigation financing agreements in the definition supplied in Section 2(I) of HB 312 also may run afoul of Rule 16-105, Rules 16-108(A), (E), and (F), and Rule 16-504(D) NMRA.

- 2) The Federal Judicial Center explains that "Third-party litigation financing (TPLF) refers to the practice of contracting as a litigant to obtain financial assistance from third-party funders in exchange for an interest in the potential recovery." See *Third-Party Litigation Financing*, Federal Judicial Center (FJC), August 2020, <https://www.fjc.gov/content/333090/third-party-litigation-financing-overview>. The cited FJC publication provides an overview, links to publications and reports, links to local rules and forms, links to state laws, and links to industry standards, including a link to the American Bar Association (ABA) Commission on Ethics 20/20 White Paper on Alternative Litigation Finance at [https://www.americanbar.org/content/dam/aba/administrative/ethics\\_2020/20111212\\_ethics\\_20\\_20\\_alf\\_white\\_paper\\_final\\_hod\\_informational\\_report.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20111212_ethics_20_20_alf_white_paper_final_hod_informational_report.authcheckdam.pdf).
- 3) The National Conference of State Legislatures (NCSL) noted in February of 2024 that state lawmakers were wading into third-party litigation funding, a potentially \$5 billion industry in the United States. <https://www.ncsl.org/state-legislatures-news/details/state-lawmakers-wade-into-third-party-litigation-funding>. The NCSL referenced a February 2024 article in the State Net Capitol Journal entitled, *State Lawmakers Wade Into Third-Party Litigation Funding*, <https://www.lexisnexis.com/community/insights/legal/capitol-journal/b/state-net/posts/state-lawmakers-wade-into-third-party-litigation-funding>. According to the State Net Capitol Journal, as of February 2024, legislation addressing litigation funding was pending in 10 states, with measures concerning disclosure of litigation funding, contract requirements, consumer protections and applicability of usury laws, among other issues.
- 4) HB 312, Section 6(B) provides that violations of the act are subject to the Unfair Practices Act. New Mexico's Unfair Trade Practices Act, Section 57-12-1 NMSA 1978

et. seq, provides for private remedies (Section 57-12-10 NMSA 1978), a civil penalty imposed by the Attorney General (Section 57-12-11 NMSA 1978), and permits service of a civil investigative demand by the Attorney General (Section 57-12-12 NMSA 1978).

#### **PERFORMANCE IMPLICATIONS**

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

#### **ADMINISTRATIVE IMPLICATIONS**

See “Fiscal Implications,” above.

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None.

#### **TECHNICAL ISSUES**

#### **OTHER SUBSTANTIVE ISSUES**

#### **ALTERNATIVES**

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

#### **AMENDMENTS**