

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: 2/6/25

Check all that apply:

Bill Number: HB 312

Original  Correction   
Amendment  Substitute

Sponsor: Rep. Marian Matthews

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

Person Writing

Short Title: Litigation Financing Transparency Act

Analysis: Mark W. Allen

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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
<b>Total</b>						

(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:

House Bill 312 (“HB 312” or the “Bill”) imposes certain substantive restrictions on third-party litigation financing agreements, and certain disclosure requirements related to those agreements.

Section 1 names it as the “Litigation Financing Transparency Act”

Section 2 adds definitions to be used in the Act

Section 3 imposes the following limits on litigation financiers (as defined in Section 2 of the Act):

- They may not direct any decisions with regard to actions they are financing, including the direction or appointment of counsel
- They may not pay commissions for referrals
- They may not assign litigation financing agreements (as defined in Section 2 of the Act)
- They may not be assigned rights to an action in which they are a party

Section 4 imposes the following mandatory disclosures related to litigation financing agreements:

- Agreements must be disclosed to represented parties in financed actions within 30 days of either retaining counsel or entering into the financing agreement.
- Agreements must be disclosed within 30 days after the commencement of the action (with an ongoing duty to disclose in the event the agreement arises after commencement of the action) to (1) each party to an action or their counsel of record, (2) the tribunal, (3) any person with a contractual duty to indemnify or defend a party, (4) to members of a class in a class action suit upon request, and (5) all lead counsel in the case of multidistrict litigation.
- Any existing legal, financial, or other relationship between legal counsel for the represented party to the litigation financing agreement and the litigation financier must be disclosed to the same five sets of parties outlined above.
- Any foreign persons who are entitled to receive any funds under any litigation

agreement or any proprietary information or information related to national defense or foreign intelligence must be disclosed to the same five parties listed above as well as to the U.S. Attorney General and the State Department.

Section 4 further provides for a process by which a litigation financing agreement can be reviewed *in camera* for the purpose of determining whether they meet the definition of the litigation financing agreement as set forth in Section 2. Section 4 also provides for mandatory sanctions for failing to make required disclosures.

Section 5 provides for mandatory indemnity for parties be included in litigation financing agreements for costs, fees, and sanctions imposed during litigation. This provision contains a carveout for intentional acts of parties.

Section 6 provides that litigation financing agreements drafted in violation of this Act are void, and that a litigation financier who violates the Act has committed an “unlawful act” as that term is used in the Unfair Practices Act.

Section 7 makes the Act effective to any proceedings that are pending or commenced after the effective date of the Bill.

Section 8 sets an effective date of December 31, 2025.

## **FISCAL IMPLICATIONS**

N/A

## **SIGNIFICANT ISSUES**

As written, HB312 would almost certainly apply to agreements entered into prior to the effective date. This could present a due process concern because the Bill would either void or materially alter existing contractual relationships. It might be prudent to carve out an exception for the substantive provisions of this Bill for agreements entered into prior to the effective date.

HB312 requires certain disclosures be made to the state department and the U.S. Attorney General’s Office, but it is unclear what the purpose of such reporting would be or what those agencies would do with that information. This seems like it might be confusing to the recipients of the information, since there are no federal laws related to litigation financing agreements.

Section 5 requires that litigation financing agreements indemnify parties against adverse costs, attorney fee awards, and sanctions. This provision carves out an exception for intentional acts of the parties. Public policy could allow for a provision that exempts intentional acts of legal counsel.

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

N/A

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

N/A

## **TECHNICAL ISSUES**

The bill makes references to portfolios of litigation agreements (Section 2(I), (I)(4), Section 4(B)(3)(a)). It is not clear whether there is a common legal meaning for that term, so it may be worthwhile to add a definition in Section 2.

## **OTHER SUBSTANTIVE ISSUES**

N/A

## **ALTERNATIVES**

N/A

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

**Status Quo**

## **AMENDMENTS**

N/A