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## FISCAL IMPACT REPORT

SPONSOR Duhigg LAST UPDATED \_\_\_\_\_  
ORIGINAL DATE 2/23/2025  
BILL  
SHORT TITLE Prohibit Certain Employment Agreements NUMBER Senate Bill 324  
ANALYST Hanika-Ortiz

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

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Courts		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  
New Mexico Attorney General (NMAG)  
Administrative Office of the Courts (AOC)

## SUMMARY

### Synopsis of Senate Bill 324

Senate Bill 324 (SB324) amends Section 50-4-36 NMSA 1978 (Employment Law) to prohibit employers from including sexual act in nondisclosure and non-disparagement clauses in settlement agreements with private employers.

Under Section 1, an employer shall not, as a condition of employment, require a prospective, current, or former employee or independent contractor to sign a nondisclosure or non-disparagement provision of a settlement agreement from a claim of sexual assault, sexual harassment, sexual discrimination, or sexual retaliation or prevent that person from disclosing a claim. The bill allows exceptions in confidentiality provisions for monetary awards, underlying facts of the case, or for facts that could lead to the identity of the employee or contractor.

Section 1 adds several subsections: E) allows the plaintiff (victim) to present evidence that the employer (defendant) entered into an agreement with a nondisclosure or non-disparagement clause, and such evidence may be used to support punitive damages; F) makes such clauses unenforceable if agreed to before the claim and if alleged to violate the law; G) invalidates any pre-dispute arbitration agreement or joint-action waiver for the claim if filed under state, federal, or tribal law, and that relate to the claim; and H) requires the statute to be liberally construed.

Section 2 applies the provisions to settlement agreements between a private employer and a

prospective, current, or former employee or independent contractor on or after June 20, 2025. This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## FISCAL IMPLICATIONS

AOC commented it would incur minimal administrative cost for updating, distributing, and documenting statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and challenges to disclosure or nondisclosure, as well as challenges to the law. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, requiring additional resources to handle the increase.

## SIGNIFICANT ISSUES

The bill adds non-disparagement clauses, which NMAG contends bar discussion of the underlying misconduct. In addition, the material expands the purview from “employees” and prevents an employer from requiring prospective or former employees, as well as independent contractors, to agree to these provisions. Additionally, the bill adds claims of workplace sexual assault.

Further, with regards to the new material that invalidates certain arbitration clauses, according to NMAG, this may be preempted by the relevant portion of the Federal Arbitration Act (FAA), 9 U.S.C. Section 2, which prevents the singling out of arbitration provisions for unenforceability.

## PERFORMANCE IMPLICATIONS

AOC noted, in 2022, the president signed the federal Speak Out Act (S. 4524) into law. The act prohibits the enforcement of nondisclosure and non-disparagement clauses in predispute agreements in sexual harassment or sexual assault cases, for employees and independent contractors. The act does not apply to agreements for claims entered into after a dispute arises.

## TECHNICAL ISSUES

Both AOC and NMAG comment that the proposed amendment to subsection D that says “except as provided in ~~Subsections B and~~ Subsection C, a confidentiality provision in a settlement agreement subject to this section is void and unenforceable...” Section D, as amended, states only that, “except as provided in Subsection C...” However, there are no confidentiality provisions in Subsection C, as amended, and this appears to contradict and negate confidentiality provisions in Subsection B, as amended. Perhaps the drafter meant “except as provided in Subsection B.”

Neither the bill nor statute contain a definition for or describe “non-disparagement” or “non-disparagement clause,” terms which AOC thought may be best to define so there is no confusion as to whether statements that are true but still damaging constitute disparagement under laws.

## OTHER SUBSTANTIVE ISSUES

As NMAG explains, Subsection E allows for the use of previous nondisclosure agreements and could result in the divulgement of settlement agreements from before the effective date of the

bill. s allows be a serious concern, the NMAG said, given that the bill likely serves a legitimate public purpose the use of previous nondisclosure agreements (NDA) in civil actions, would result in divulging settlement agreements made before the bill’s effective date, creating a conflict with Section 1, Article, 10 of the U.S. Constitution. “However, this may not be such a serious concern given that the bill likely serves a legitimate public purpose and may be deemed ‘reasonable and necessary’ for that purpose.” Also from NMAG:

Additionally, the bill applies to claims made under “federal, tribal, or state law.” However, the bill would only be applicable to contracts interpreted under New Mexico state law and disputes heard in New Mexico courts. If a dispute concerns a violation of tribal law, heard by a tribal court, then it is very likely that circumstances of the contract itself would require it to be interpreted according to the law of the relevant tribe. Under those circumstances, the bill would not be applicable.

## AMENDMENTS

As suggested by AOC, NMAG (see “Technical Issues”):

- 1) Amend Section 1(D) to include both Subsections B and C.
- 2) Define either one or both of the terms “non-disparagement” and/or “non-disparagement clause” as used in Section 50-4-36 NMSA 1978.

AHO/rl/hg