FISCAL IMPACT REPORT

SPONSOR Dow **LAST UPDATED** **ORIGINAL DATE** 2/11/25

SHORT TITLE Legal Services Advertisement **BILL NUMBER** House Bill 262

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	Current School Fund (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
NMAG	**No fiscal impact**	**Indeterminate but minimal**	**Indeterminate but minimal**	**Indeterminate but minimal**	Recurring	**General Fund**
District Attorneys	**No fiscal impact**	**Indeterminate but minimal**	**Indeterminate but minimal**	**Indeterminate but minimal**	Recurring	**General Fund**
Courts	**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
Administrative Office of the Courts (AOC)
Administrative Office of the District Attorney (AODA)
New Mexico Attorney General (NMAG)
General Services Department (GSD)
State Ethics Commission (SEC)

Agency Declined to Respond
Economic Development Department (EDD)
Public Defender Department (PDD)

SUMMARY

Synopsis of House Bill 262

House Bill 262 (HB262) would enact a new section within Chapter 57 NMSA 1978 to require that, when an advertisement by an attorney or law firm includes a monetary amount awarded to a client(s) for a settlement or judgment on a civil action, the advertisement must also disclose the amount of money charged to the client(s) for the services related to the award.

HB262 would require the New Mexico Attorney General (NMAG) to impose a civil penalty of $500 per violation if an attorney or law firm violates the disclosure requirements of the bill. HB262 also permits NMAG or a district attorney, with NMAG's permission, to bring a civil action in district court to recover a civil penalty assessed pursuant to this section. Civil penalties collected pursuant to this section are required to be deposited in the current school fund.

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

HB262 would require NMAG to use more resources to assess whether civil penalties related to attorney or law firm advertisement should be imposed and to bring civil actions to enforce the bill.

The Administrative Office of the Courts (AOC) provides the following:

> 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 commenced civil actions, and appeals from the assessment of a civil penalty, 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, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

The NMAG provides the following related to concerns over separation of powers:

> 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.

The State Ethics Commission (SEC) provides the following challenges related to first

amendment and due process:

First Amendment Challenges

The requirement that certain terms in attorney advertisements be published may be challenged as a violation of the First Amendment in that it compels commercial speech. However, the bill likely passes constitutional muster. The United States Supreme Court has previously analyzed disclosure requirements in attorney advertisements, determining that such regulations are permissible so long as the requirement (1) discloses purely factual information "in order to dissipate the possibility of consumer confusion or deception," and (2) is not unjustified or unduly burdensome. See Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio, 471 U.S. 626, 651 (1985) (citations omitted). For example, in Zauderer, an attorney was disciplined by the Ohio Supreme Court for a failure to properly disclose information related to fee structure and client liability of litigation costs. Using the test described above, the United States Supreme Court determined that a required disclosure was constitutionally permissible because the regulation only required factual, clarifying information to be disclosed, and because the disclosure was not unjustified or unduly burdensome. Id.

As applied to HB262, the disclosure requirement likely satisfies the Zauderer test. First, the regulation only requires the disclosure of factual, clarifying information. Many attorneys and law firms in New Mexico, including those with more infamous advertising campaigns, work on contingency fees. The New Mexico Rules of Professional Conduct—the regulations governing attorneys in the state—do not set a maximum percentage that an attorney or law firm may take from a judgment. See Rule 16-105(D) NMRA. The only requirement is that any fee collected be "reasonable." See Rule 16-105(A) NMRA. While the rules of professional conduct include factors determining what is considered "reasonable," see id., most attorneys working on contingency seek between 25 percent and 40 percent of the amount recovered through settlement or judgment. Requiring that attorneys and law firms disclose the fee they take from settlements and judgment is likely to be considered factual information that may "dissipate the possibility of consumer confusion or deception." Second, merely requiring the attorney or law firm to print an additional line of text on any particular advertisement if produced through a visual format or say a few more words if the advertisement is produced through an audio format is likely not unjustified or unduly burdensome.

Due Process Challenges

HB 262's civil penalty structure may be challenged as a violation of the Due Process Clause. The Due Process Clause provides that a person may not be deprived of life, liberty, or property without due process of the law. U.S. Const. amend. XIV, § 1; N.M. Const. art. II, § 18. Money is a property interest. See Bd. of Regents of State Colleges v. Roth, 408 U.S. 564, 571–72 (1972). However, due process concerns are usually satisfied—and constitutional challenges avoided—when some kind of pre-deprivation hearing occurs. See id.

As written, HB262 permits the NMAG to simply assess a civil penalty against an attorney or law firm that violates the section, without requiring the attorney or law firm be provided any sort of hearing, notice, or opportunity to be heard. Attorney advertisers would receive no notice of non-compliance, no opportunity to be heard, and no chance to remedy the violation before being fined $500.00. Only after the penalty is assessed can an

attorney advertiser challenge the determination in court. While there are certain constitutional circumstances where a post deprivation hearing may satisfy due process concerns, those situations are limited and the secondary civil enforcement action arguably does not cure the due process concerns with authorizing the NMAG to assess a penalty without any notice or opportunity to be heard.

ADMINISTRATIVE IMPLICATIONS

NMAG will have to develop and administer resources to track compliance with the bill and district attorney offices could also expend some resources if they are allowed to also impose civil fines.

OTHER SUBSTANTIVE ISSUES

AOC provides the following:

Some examples from other states requiring disclosure of attorney fee and costs arrangements:

- Arizona: advertisement containing information on the lawyer's fees must explain if the client will be held liable for expenses regardless of the outcome and whether the percentage fee will be computed before expenses are deducted from the recovery.
- California: when an advertisement states that there will be no fee without recovery, the advertisement must also include whether or not the client will be held liable for costs. If the advertisement states that an attorney works on a contingency basis, the statement must also advise if the client will be held responsible for any advanced costs when no recovery is obtained.
- Colorado: communications implying that a client does not have to pay a fee must also disclose that the client may be liable for costs, but this provision does not apply to communications that discuss contingent or percentage fee arrangements.
- Connecticut: advertisements and written communications containing information on fees are required to disclose if the client will be held responsible for court costs and litigation expenses. The disclosure must be the same print size and type as the information regarding the lawyer's fees. If broadcast, the disclosure must appear for the same duration as the information regarding fees.

See Legal Advertising Laws, April 2023 (updated December 2024), Legal Advertising Laws Across the United States | PMP, and for a listing of additional examples of state laws requiring disclosure of fee and cost arrangements.

It appears that the state law examples above can be distinguished from the HB262 requirement that when a monetary award amount is mentioned in an advertisement the advertisement is also required to disclose the monetary amount that was charged to the client for services rendered, in that the other state laws apply generally to disclosure of fee and cost arrangements and are not requiring disclosure of protected and confidential information related to specific client representation.

FC/hj