

LFC Requester:	Chavez
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(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: 2/6/2025 *Check all that apply:*
Bill Number: HB 262 Original Correction
 Amendment Substitute

Sponsor: Rep. Rebecca Dow **Agency Name and Code** State Ethics Commission (410)
Short Title: Legal Services Advertisements **Number:** _____
Title: _____ **Person Writing** Connor G. Woods
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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

BILL SUMMARY

Synopsis: House Bill 262 creates a new section in statute requiring that when an attorney or law firm advertises their services, and that advertisement includes a proclamation regarding money awarded through either settlement or judgment, the advertisement also includes a disclosure of how much the attorney/firm received in exchange for their representation.

HB 262 further provides that a failure to include the disclosure carries with it a civil penalty of \$500.00 to be assessed by the state Attorney General (NMAG). The NMAG, or a district attorney in the district where the advertisement ran who is also authorized by the NMAG, is further empowered to initiate civil action to collect the penalty.

Finally, HB 262 provides that any civil penalty recovered is deposited into the Current School Fund.

FISCAL IMPLICATIONS

Does not appear to have any fiscal implications for the State Ethics Commission.

SIGNIFICANT ISSUES

Generally, House Bill 262 may be met with several legal challenges if passed.

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 HB 262, 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% and 40% 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, HB 262 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.

Separation of Powers Concerns

The New Mexico Supreme Court has exclusive jurisdiction to discipline attorneys who practice law in New Mexico. *See* Rule 17-201 NMRA. The New Mexico Supreme Court has adopted the Rules of Professional Conduct which regulate attorney conduct. *See* Rules 16-100 to -800 NMRA. These rules include restrictions on how an attorney may advertise their services. *See* Rule 16-702(A)–(D) NMRA. Additionally, attorneys who fail to follow the Rules of Professional Conduct are brought in front of the Disciplinary Board of the New Mexico Supreme Court for disciplinary proceedings. Thus, an attorney who advertises services improperly is subject to discipline by the Disciplinary Board.

By creating a separate regulation and enforcement mechanism, HB 262 purports to add a secondary manner by which attorney advertisements are regulated. Because the bill here focuses on the content of advertising, it is possible that having two separate regulatory schemes (that is, one by which the attorney faces potential disciplinary consequences and one under which the attorney faces civil penalties by law enforcement) would be permissible, but it is possible the enforcement of the provisions in HB 262 may raise a separation of powers question. Because the New Mexico Supreme Court is the ultimate authority on who may practice law in New Mexico, how those individuals may advertise their services, and how punishment is determined, then having a law transferring some of that authority to the NMAG might be challenged on those grounds.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS